

Mildred C. Richardson v. Philip Morris Inc.
Samuel A. Reed v. Philip Morris Inc.
Iron Workers Local v. Philip Morris Inc.

Deposition Testimony of Leonard Zahn
with Exhibits, Volumes I-III
December 1, 1998
December 16, 1998
January 13, 1999

(Redacted)

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TRANSCRIPTS

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COPY

1 Mildred C. Richardson)
2 et al.,) In the
3 Plaintiff) Circuit Court
4) For
5 vs.) Baltimore City
6)
7 Philip Morris, Incorporated,) Case No.:
8 et al.,) 96145050/CE212596
9 Defendant) VOLUME I

10 -----
11 Deposition of **LEONARD ZAHN** taken on
12 Tuesday, December 1, 1998 at 9:26 a.m., at the
13 Inn at Great Neck, 30 Cutter Mill Road, Great
14 Neck, NY before E. Duane Smith, RPR-CRR, Notary
15 Public.

16 -----

17

18

19

20 Reported by:

21 E. Duane Smith, RPR-CRR

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11 the Witness

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20
21 Also present: Jim Brady, Videographer

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P R O C E E D I N G S

Whereupon,--

VIDEO OPERATOR: Today's date is December 1, 1998. The time is 9:26 a.m. My name is Jim Brady, I'm the videographer from Certified Video Productions. I ask now that the attorneys introduce themselves and for the court reporter to swear in the witness, please.

MR. HOSKINS: Good morning, sir. My name is David Hoskins. I'm counsel for the plaintiffs in the Richardson class action case and the Reid class action case, and with me is Craig Boas.

We are from the law offices of Peter Angelos.

MR. KRISTAL: My name is Jerry Kristal, and I respect the plaintiffs in the Iron Workers Local 17 case. Good morning, Mr. Zahn.

MR. KLUGMAN: I'm Steve Klugman, from Debevoise & Plimpton. I'm here on behalf of the witness. We also represent the Council for

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1 Tobacco Research, which is a defendant in the
2 cases that I just mentioned.

3 MR. SCHEINER: I'm Alan Scheiner from
4 Debevoise & Plimpton, and I also represent
5 Mr. Zahn and the Council for Tobacco Research.

6 MS. WOODWARD: Sky Woodward from Miles &
7 Stockbridge in Baltimore, representing the
8 Council for Tobacco Research.

9 LEONARD ZAHN,
10 being first duly sworn to tell the truth, the
11 whole truth, and nothing but the truth, testified
12 as follows:

13 EXAMINATION BY MR. HOSKINS:

14 Q. Good morning again, sir.

15 A. Good morning.

16 Q. Could you please state your full name
17 and spell your last name.

18 A. Leonard Zahn, Z-a-h-n.

19 Q. Okay. You have a middle name or middle
20 initial?

21 A. Yes. Seymour, S for Seymour.

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1 Q. Your current home address?

2 A. [DELETED]

3 Q. Do you have any addresses or own any
4 property in the State of Maryland?

5 A. No. I do not.

6 Q. Are you currently employed?

7 A. No. I am not.

8 Q. Do you currently do any consulting work
9 for any person?

10 A. No. I do not.

11 Q. Do you consider yourself to be retired?

12 A. Yes.

13 Q. What's the name of your wife?

14 A. Hilda.

15 Q. Is Ms. Zahn still employed?

16 A. No.

17 Q. What is the status of Leonard Zahn &
18 Associates?

19 A. Dissolved.

20 Q. When was it dissolved?

21 A. I believe it was '94, somewhere around

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1 that time.

2 Q. Prior to its dissolution, was that a
3 corporation in the State of New York?

4 A. Yes. It was.

5 Q. Who were the members of that
6 corporation, the board?

7 A. The board consisted of my wife and
8 myself.

9 Q. And was it any special kind of
10 corporation, a limited corporation?

11 A. It was a -- an S Chapter corporation.

12 Q. It was incorporated under the laws of
13 the State of New York?

14 A. Yes.

15 Q. Who were the employees of Leonard Zahn
16 & Associates?

17 A. My wife --

18 MR. KLUGMAN: Excuse me, who were?

19 MR. HOSKINS: Who were the employees?

20 A. My wife and myself.

21 Q. Were there any other employees?

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1 A. No.

2 Q. What was the formal legal name of that
3 entity?

4 A. Leonard Zahn & Associates, Inc.

5 Q. When was Leonard Zahn & Associates,
6 Inc., formed?

7 A. 1969.

8 Q. And at any time from 1969 to the
9 dissolution in 1994, were there any other
10 employees of that corporation?

11 MR. KLUGMAN: Objection to the form.

12 A. Years ago, my mother-in-law did
13 clerical work for me for a short period of time.
14 I may have had one of my daughters working on
15 summer vacation from school. I don't remember.

16 Q. The name of your mother-in-law?

17 A. Celia Goldberg.

18 Q. Is she still living or deceased?

19 A. She is alive.

20 Q. Your daughter who worked part time?

21 MR. KLUGMAN: Objection to the form.

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1 A. I believe it was Claudia, Claudia Zahn.

2 Q. Is that her current name?

3 A. Yes.

4 Q. Where does she live?

5 A. In Seattle.

6 Q. During what period of time did your
7 wife work for Leonard Zahn & Associates,
8 Incorporated?

9 A. It was not during the first several
10 years. I cannot recall exactly when she started
11 working full time. Probably -- I'm trying to
12 remember when my kids were off at college.

13 It was probably in the early to mid
14 seventies. I can't be sure of that. I just
15 don't remember.

16 Q. You are a veteran of World War II,
17 correct?

18 A. Yes. I am.

19 MR. KLUGMAN: Mr. Zahn, wait until he
20 finishes the question, sir.

21 THE WITNESS: Fine.

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1 Q. Served in the Army Air Corps, yes?

2 A. Yes.

3 Q. Discharged honorably as a first
4 lieutenant?

5 A. That's right.

6 Q. Where were you stationed when you were
7 in the Army Air Corps?

8 A. Well, I was stationed in this country,
9 and I spent about 20 or 22 months in the
10 Southwest Pacific.

11 Q. What division or entity were you
12 attached to, do you remember?

13 A. Well, I ended up -- when I overseas I
14 was if 17th Photo Reconnaissance Squadron.

15 Q. Were you a pilot, sir?

16 A. No. I was a communications officer.

17 Q. What division was the 17th Photo
18 Reconnaissance Detachment assigned to, sir?

19 A. You don't mean an Army division.
20 That's an infantry outfit. We were not attached
21 to the infantry at all. We took pictures for the

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1 ground forces and for the Air Forces.

2 We provided aerial intelligence for
3 whatever branch of the service would get involved
4 in dealing with the enemy.

5 Q. And prior to, did you enlist or were
6 you drafted?

7 A. I enlisted.

8 Q. Prior to enlisting, what were you
9 doing?

10 A. I was working and going to college at
11 night.

12 Q. What college were you attending?

13 A. You are asking me to go back to 1942.
14 I was at Suffolk University in Boston.

15 Q. Where were you working?

16 A. I worked in a rain coat factory. I
17 don't remember the name of it. My father had
18 also worked there, and I did menial work there,
19 physical labor.

20 Q. Did you -- had you graduated from
21 Suffolk University before enlisting?

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1 A. No. I finished my second year there.

2 Q. How was it you earned a commission in
3 the United States Army?

4 A. I decided I did not want to be an
5 enlisted man. I believed strongly, I learned to
6 believe strongly in the an acronym RHIP, the day
7 after I got into the Army.

8 Q. Rank has its privileges?

9 A. Rank has its privileges. I didn't like
10 picking up cigarette butts.

11 Q. Okay.

12 A. And I did well in school, and I was
13 offered an opportunity to become an aviation
14 cadet, which I happily accepted.

15 Q. When were you commissioned?

16 A. September of 1943.

17 Q. Reserve Army commission? Do you
18 remember?

19 A. I stayed in the Reserves after the war
20 until the Korean War broke out and I was
21 recalled, but I managed not to go. I was able to

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1 resign my commission honorably.

2 Q. And when you resigned your commission,
3 what was your rank in the reserves?

4 A. First lieutenant.

5 Q. When were you discharged from active
6 duty?

7 A. I was on terminal leave until
8 approximately March or April of '46, I believe,
9 something like that, I can't recall exactly.

10 Q. What did you do after leaving service?

11 A. I finished college.

12 Q. Where did you graduate from?

13 A. The University of Massachusetts.

14 Q. Was that the same as Suffolk
15 University?

16 A. No.

17 Q. Did you earn a degree?

18 A. Yes, I did.

19 Q. What was your degree in?

20 A. Bachelor of Arts.

21 Q. When were you graduated?

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- 1 A. 1948.
- 2 Q. What was your major?
- 3 A. English literature.
- 4 Q. Any postgraduate work?
- 5 A. No.
- 6 Q. After graduating from the University of
- 7 Massachusetts with a bachelor of arts degree in
- 8 1948, what did you do next?
- 9 A. I went to work the day after graduation
- 10 for United Press.
- 11 Q. United Press International?
- 12 A. It was not United Press International
- 13 for a number of years. It was United Press.
- 14 Q. A news wire service?
- 15 A. Yes.
- 16 Q. Where were you stationed for United
- 17 Press?
- 18 A. In Boston.
- 19 Q. What was your job and responsibilities
- 20 for United Press?
- 21 A. I was a correspondent, that was the

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1 title, United Press correspondent.

2 Q. How long did you stay with United
3 Press?

4 A. About three and a half years.

5 Q. Takes us to mid 1951?

6 A. Maybe it was toward the end of '51.

7 Q. What did you do then, sir?

8 A. I accepted a job with a public
9 relations agency in New York.

10 Q. The name of that public relations
11 agency?

12 A. Carl, C-a-r-l, Byoir, B-y-o-i-r, &
13 Associates.

14 Q. How long did you stay with that
15 company?

16 A. Until sometime in 1955. I think the
17 early part of 1955.

18 Q. What was your job at Carl Byoir &
19 Associates?

20 A. I was Assistant Account Executive and I
21 think I also became an Account Executive, the

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1 usual titles.

2 Q. What accounts did you work on at that
3 job?

4 A. I worked for the A&P, Atlantic &
5 Pacific Tea Company, A&P Foods. I think the
6 latter part of my stay there, I was full time on
7 an account called the Eastern Railroad Presidents
8 Conference.

9 Q. In 1955, you were hired by Hill &
10 Knowlton?

11 A. Yes.

12 Q. Who hired you?

13 A. Well, the first man I met from Hill &
14 Knowlton, I had met while I was a newspaper man,
15 a journalist in Boston, Harmon Harris, and it was
16 through him that I was introduced to the people
17 at Hill & Knowlton, particularly Merrick
18 Jackson. God, I haven't thought of that name in
19 so long.

20 I'm not sure whether, after I went over
21 to Hill & Knowlton and was interviewed by a

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1 number of their executives, whether he hired me
2 or some other officer called me and said when can
3 you come to work and here is what we'll pay and
4 so forth. I just don't remember that.

5 Q. When you were hired by Hill & Knowlton,
6 you were give the assignment of working on the
7 Tobacco Industry Research Committee, correct?

8 A. Yes. On that account.

9 Q. Who else from Hill & Knowlton was
10 working for TRIC at that time frame?

11 MR. KLUGMAN: Objection to the form.
12 You mean who was assigned to that?

13 MR. HOSKINS: Yes, sir.

14 MR. KLUGMAN: You don't mean an
15 employee, I assume.

16 A. Carl Thompson, I believe Kenneth
17 Austin, A man named Kenneth Austin, A-u-s-t-i-n.
18 I don't know if Bill Jenkins was on the account
19 then or later. I don't remember that, but I know
20 the first two names I mentioned were there.

21 Q. Where were you physically stationed?

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1 A. I believe it was the Empire State
2 Building.

3 Q. Was your office in the portion of the
4 Hill & Knowlton office, offices that dealt with
5 the tobacco Industry Research Committee?

6 MR. KLUGMAN: Objection to the form.

7 A. Yeah, my office was in the Hill &
8 Knowlton floor.

9 Q. Now, how many floors in the Empire
10 State Building did Hill & Knowlton occupy when
11 you joined?

12 A. I don't recall.

13 Q. Was one of those floors set aside for
14 TIRC?

15 MR. KLUGMAN: Objection to the form.

16 A. Well, I know that TIRC's offices at
17 this time was either one floor below or one floor
18 above.

19 Of course, I don't think it occupied an
20 entire floor, although we were way up in the mid
21 fifties, so the floors there are smaller. I

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1 haven't been there since then, so I don't recall
2 exactly, but TIRC was on a different floor. I
3 remember that.

4 Q. Did you work exclusively on the TIRC
5 account?

6 MR. KLUGMAN: Objection to the form.

7 A. At the beginning, yes, but as time went
8 on, I did some work for other accounts. But my
9 major work assignment was for TIRC, or on the
10 TIRC account.

11 Q. At the time, did you know any of the
12 employees of TIRC?

13 A. Yes.

14 Q. You knew C. C. Little, correct?

15 A. Yes.

16 Q. What other employees of TIRC did you
17 meet?

18 A. Tom Hoyt, W. T. Hoyt, Dr. Robert
19 Hockett, H-o-c-k-e-t-t.

20 Q. Okay.

21 A. Liz Kelly, Elizabeth Kelly. I'm trying

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1 to remember if there were other people. I just
2 don't recall.

3 Q. You knew Dr. Kreisher, correct?

4 MR. KLUGMAN: Objection to the form. I
5 thought we were in 1955.

6 MR. HOSKINS: We are.

7 A. I'm not sure he was there at the time.

8 Q. When did Dr. Little hire Dr. Kreisher?

9 MR. KLUGMAN: Objection to form.

10 A. I don't know. I don't know.

11 Q. You ultimately knew Dr. Kreisher,
12 correct?

13 A. Yes.

14 Q. You were working on the account when
15 Dr. Kreisher was hired, correct?

16 A. Yes.

17 Q. Now, Mr. Hoyt, was it doctor or
18 mister?

19 A. Mister.

20 Q. What was his position when you started
21 at Hill & Knowlton?

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1 A. I'm not sure of the title he had at
2 TIRC. He could well have been executive
3 secretary. But he was the man who ran it from
4 day to day.

5 Q. Okay.

6 A. I neglected to add another name there,
7 Timothy Hartnet, who was the chairman, but he was
8 not there every day. He lived in Louisville,
9 Kentucky, he was a retired officer of a tobacco
10 company.

11 Q. And that tobacco company was what,
12 Brown & Williamson?

13 A. Brown & Williamson, yes.

14 Q. Hockett, who was Hockett?

15 A. He was a scientist. I'm not sure
16 whether he was associate scientific, I don't know
17 what his title was at that time.

18 Q. Elizabeth Kelly, who was she?

19 A. She was a secretary, did administrative
20 work. She worked mostly for Mr. Hoyt.

21 Q. How long did you continue your

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1 employment with Hill & Knowlton?

2 A. Until 1969.

3 Q. And that's when you formed -- well,
4 strike that. What did you do in 1969?

5 A. I resigned from Hill & Knowlton and
6 formed my own company.

7 Q. Now, from 1955 to 1969 Hill & Knowlton
8 provided services to the Tobacco Industry
9 Research Committee, correct?

10 MR. KLUGMAN: Objection to the form.

11 A. Not for every year. It was not an
12 unbroken number of years. There was a time when
13 TIRC and its successor, the Council for Tobacco
14 Research, were not or was not a client of Hill &
15 Knowlton.

16 Q. And during that time, well, what time
17 period was that, sir?

18 A. I can't recall, but it was sometime in
19 the sixties.

20 Q. And during that time period, did you
21 continue to provide any services for TIRC or the

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1 CTR?

2 A. Yes.

3 Q. Even though they weren't a client of
4 Hill & Knowlton?

5 A. It was not a full-time client, not even
6 a partial client, but I personally did some work
7 for the counsel every year. I did the annual
8 report.

9 Q. Okay. And when was the first year you
10 assisted in drafting the annual report?

11 A. I guess it was 1956.

12 Q. Okay, is it fair to say, sir, that you
13 drafted every annual report from 1956 until you
14 left that working for CTR?

15 MR. KLUGMAN: Objection to the form,
16 misstates his testimony.

17 A. I don't know what you mean -- I think I
18 know what you mean by draft. I was involved with
19 the annual report. In later years, I did it
20 almost entirely. I did the entire thing
21 practically.

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1 In the earlier years, I did not, but
2 I was involved with it every year that an annual
3 report was issued.

4 Q. And what was the last year that you
5 worked on an annual report for CTR?

6 A. Well, the last year or two Dr. Hashim
7 began working, a recent employee then of the
8 council, began working on the report with me.

9 I was asked to, you know, break him
10 into it, so that he would have some further work
11 to do. But I think it was probably '93 or '94,
12 but I'm not sure of the exact year.

13 Q. Do you recall when it was that the
14 Council for Tobacco Research came into
15 existence?

16 A. It was before I went to work at Hill &
17 Knowlton. I believe it was 1954.

18 Q. Let me back up a second. I said
19 Council for Tobacco Research. You probably
20 thought I meant TIRC. I want to talk about when
21 the name changed.

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1 Do you remember when the name changed?

2 A. Could have been 1958, perhaps, a year
3 or two later, I'm not sure. I don't remember.

4 Q. Do you know the circumstances that led
5 the CTR to stop using Hill & Knowlton?

6 MR. KLUGMAN: Objection to the form.

7 A. Well, there wasn't much to do at the
8 time that Hill & Knowlton stopped working for
9 CTR, and I guess the Council was trying to save
10 money. Hill & Knowlton was not an inexpensive
11 company to retain. That's about all I can recall
12 of it.

13 Q. What led you to form your own company?

14 A. Henry Ramm, the chairman of CTR in
15 1969, and Tom Hoyt asked me in that year if I
16 would come to work directly for the Council.

17 And I came back with a counter offer
18 which was that I would leave Hill & Knowlton and
19 set up my own public relations firm and the
20 Council would become a client.

21 They objected to that. But since we

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1 had been friendly for a long time, they gave me
2 the opportunity to present my proposal before the
3 board, CTR's board, which I did, and the board
4 accepted my proposal, so I did go to work for
5 them, but as a consultant and not as an
6 employee.

7 I told them that if -- excuse me -- I
8 had told them that if the board, if the directors
9 rejected my proposal, I would go to work for
10 them.

11 Q. As an employee?

12 A. Yes.

13 Q. Fair to say, sir, you were never a
14 direct employee of the Council for Tobacco
15 Research?

16 A. That's right.

17 MR. KLUGMAN: Please wait until he
18 finishes the question.

19 Q. You worked for Hill & Knowlton and then
20 you set up a consulting firm, is that correct?

21 A. Yes.

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1 Q. That consulting firm was the one we
2 discussed earlier, Leonard Zahn & Associates,
3 Incorporated?

4 A. Yes.

5 Q. Henry Ramm you knew personally,
6 correct?

7 A. Well, of course, yes.

8 Q. You knew that Henry Ramm, prior to
9 becoming the chairman of CTR, was a lawyer who
10 worked for R.J. Reynolds, correct?

11 MR. KLUGMAN: Objection to the form.

12 A. Yes.

13 Q. You understood he was general counsel
14 of R.J. Reynolds?

15 MR. KLUGMAN: Objection to the form.

16 A. I believe so.

17 MR. KLUGMAN: Please let him finish the
18 question.

19 Q. And at the time in 1969, when you
20 formed your consulting firm, who served on the
21 board of directors from CTR, do you remember the

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1 names of the individuals?

2 A. I can give you a number of names, but
3 I'm not sure they were on the board at that
4 time. I really cannot recall that.

5 MR. KLUGMAN: Mr. Zahn, can I interrupt
6 for a second. I want to make sure we have a
7 clear record. We've had some confusion at
8 previous depositions, excuse me, because as you
9 are aware, Mr. Hoskins is aware, CTR has had both
10 a board of directors and a Scientific Advisory
11 Board.

12 So I think using the term "board" is
13 going to be possibly confusing. Mr. Hoskins said
14 board of directors, and I know that's what we are
15 talking about, so if you could try to distinguish
16 between the two, I think it would be helpful.

17 MR. HOSKINS: We may talk about the
18 Scientific Advisory Board, but when we do, I'll
19 either call it the Scientific Advisory Board or
20 the SAB, which is a term you are familiar with,
21 correct?

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1 THE WITNESS: Yes.

2 Q. When you made your presentation, you
3 understood that the president of Philip Morris,
4 whoever that person may be, was on the CTR board
5 of directors, correct?

6 MR. KLUGMAN: Objection to the form.

7 A. I believe so, unless he designated the
8 executive vice-president. I just don't recall.

9 Q. Tell the jury what you recall about
10 what people made up the CTR board of directors.

11 A. You said "tell the jury"?

12 Q. Yes, sir. That's the video camera.

13 A. What type of people?

14 Q. Yes, sir.

15 A. They were CEO's or high ranking
16 officers of the member companies.

17 Q. And while you were at, worked at
18 Leonard Zahn & Associates, do you recall the
19 companies that were members of the Council for
20 Tobacco Research?

21 A. I believe I recall the tobacco

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1 companies. There were some grower associations
2 and a warehouse association who rarely, if ever,
3 attended meetings.

4 They did not contribute financially,
5 but I believe they retained membership. But the
6 major tobacco companies, with one exception.

7 Q. And that exception was what?

8 A. Liggett & Meyers.

9 Q. And so that meant that the member
10 companies included Philip Morris, correct?

11 A. Yes.

12 Q. R.J. Reynolds, correct?

13 A. Yes.

14 Q. Lorillard Tobacco, correct?

15 A. Yes.

16 Q. American Tobacco, correct?

17 A. Yes.

18 Q. And later American Tobacco was called
19 American Brands?

20 A. Yes.

21 MR. KLUGMAN: Well, objection to the

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1 form.

2 Q. You understood that, correct, sir?

3 MR. KLUGMAN: You know that that is not
4 true, Mr. Hoskins.

5 MR. HOSKINS: I will show you some
6 documents.

7 Q. You understood that ABI is what?

8 A. What is ABI, American Brands, Inc.?

9 Q. That's right.

10 A. I believe.

11 MR. KLUGMAN: Is the question here who
12 were the members.

13 MR. HOSKINS: Yes, sir.

14 A. I'm sorry.

15 MR. KLUGMAN: Please, Mr. Zahn --

16 THE WITNESS: I'm waiting.

17 MR. HOSKINS: You are doing a good job,
18 Mr. Zahn.

19 MR. KLUGMAN: You are doing a good
20 job. Please try to slow down so that I can
21 interpose an objection.

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1 Q. I think we talked about everyone except
2 Brown & Williamson, but they were a member,
3 correct, sir?

4 A. Yes.

5 Q. Did you ever hear of the term "the
6 Brethren"?

7 MR. KLUGMAN: Objection to the form.

8 A. Yeah, I believe I have heard of it, but
9 not in any reference to the subject we are here
10 for today..

11 Q. Did you ever hear the CTR board of
12 directors referred to as the Brethren?

13 A. Never. No.

14 Q. Now, did there come a time when the
15 TIRC moved from the Empire State Building?

16 A. Yes.

17 Q. Do you remember when that was, sir?

18 A. It was, I think, in the 1950's.

19 Q. And do you remember where -- I'm sorry,
20 I apologize.

21 MR. KLUGMAN: Still ruminating.

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1 A. Late in the fifties. I'm not sure of
2 the date. I can't even approximate it really.

3 Q. Do you remember where they moved to?

4 A. I know that Hill & Knowlton moved from
5 the Empire State Building to the Mobil Building
6 at the corner of 42nd Street and 3rd Avenue, that
7 building had just opened.

8 I'm not sure whether TIRC moved to that
9 same building or to an address -- to an address
10 on 3rd Avenue, which I know for sure it later
11 occupied. I just don't remember.

12 Q. Do you know the current address of CTR?

13 A. Yes.

14 Q. What's the current address?

15 A. I believe it is 900 3rd Avenue. If
16 that's not the right number, it is in a building
17 between 54th and 55th Street. I'm not even sure
18 of that.

19 Q. Is that the 3rd Avenue building you are
20 talking about?

21 A. No.

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- 1 Q. There was another 3rd Avenue building?
- 2 A. Yes. On the other side of 42nd Street.
- 3 Q. How long was the CTR in that building,
- 4 do you know?
- 5 A. I don't know.
- 6 Q. You heard of something called the LRT
- 7 or Literature Retrieval Division?
- 8 A. Yes.
- 9 MR. KLUGMAN: Objection.
- 10 Q. What did you understand the Literature
- 11 Retrieval Division to be?
- 12 MR. KLUGMAN: Objection to form.
- 13 A. I never really inquired at length or
- 14 in-depth, but my understanding was that it was
- 15 just what its name said, it collected literature,
- 16 medical literature.
- 17 Q. Do you remember where that was located
- 18 physically?
- 19 A. The only place I know where it was was
- 20 when the Council was on East 59th Street.
- 21 Q. Is that another address from the 3rd

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1 Avenue, the two 3rd Avenue addresses you have
2 testified about?

3 A. I believe it was the address preceding
4 the move to its presentation location.

5 Q. And it was on east 59th Street, sir?

6 A. Yes.

7 Q. Now, in that time frame, you understood
8 that the Literature Retrieval Division was
9 considered part of the Council for Tobacco
10 Research; is that a fair statement?

11 MR. KLUGMAN: Objection to the form.

12 A. I never knew that for sure.

13 Q. What I would like you to focus on, do
14 you recall when the Council for Tobacco Research
15 was located at 800 2nd Avenue?

16 MR. KLUGMAN: Objection to the form.

17 MR. HOSKINS: In 1980.

18 A. I really don't know, Mr. Hoskins, I
19 just can't recall.

20 Q. When you had a recollection of the
21 Literature Retrieval Division, was it your

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1 recollection it was on a separate floor from the
2 rest of the CTR offices?

3 MR. KLUGMAN: Objection to the form.

4 A. My recollection of when I first heard
5 about Literature Retrieval was when CTR was at
6 130 East 59th Street, and I know it was on a
7 separate floor, because Bill Jenkins took me up
8 there one day for the first time and I think the
9 only time. I may have gone there one other time,
10 but I recollect being there just once.

11 Q. And tell the jury who Mr. Jenkins was.

12 A. Bill Jenkins handled the library at the
13 Council.

14 Q. And was the library on the same floor
15 or a different floor from the Literature
16 Retrieval Division?

17 A. No. It was in the CTR office, as I
18 remember.

19 Q. And when you went to the Literature
20 Retrieval Division with Mr. Jenkins, what did you
21 see?

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1 A. I saw some what I thought were
2 computers. I just can't remember. I was there a
3 short time. I met the man who was in charge of
4 it, and I don't even remember his name or his
5 face.

6 Q. Do you recall a Frederick B. Giller,
7 G-i-l-l-e-r?

8 A. I remember the name now.

9 Q. Is that the gentleman you met with?

10 A. I believe so.

11 Q. What was the purpose, if any, of your
12 visit to the Literature Retrieval Division?

13 A. I can't even recall.

14 Q. Fair to say you never used the services
15 of the Literature Retrieval Division?

16 A. Never. No.

17 Q. To your knowledge, did any employee at
18 CTR use the services of the Literature Retrieval
19 Division?

20 MR. KLUGMAN: Objection.

21 A. I have no idea.

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1 MR. KLUGMAN: Please wait, Mr. Zahn,
2 let me object if I have to.

3 Q. Who, if anyone to your knowledge, used
4 the services of the Literature Retrieval
5 Division?

6 MR. KLUGMAN: Objection to the form.

7 A. I have no idea.

8 Q. Did you every hear of 3i Incorporated?

9 A. I'm not sure.

10 Q. What understanding, if any, do you have
11 if any concerning the formation of the Literature
12 Retrieval Division?

13 MR. KLUGMAN: Objection to form.

14 A. None at all.

15 Q. Did you know Dr. Frank Colby?

16 A. Yes.

17 Q. From R.J. Reynolds?

18 A. Yes.

19 Q. When did you first meet Dr.

20 Frank Colby?

21 A. Years ago. I can't give you a specific

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1 time at all.

2 Q. What were the circumstances that led
3 you to meet Dr. Frank Colby, do you remember?

4 A. No. I do not.

5 Q. What did you understand Dr. Frank
6 Colby's job to be at R.J. Reynolds?

7 MR. KLUGMAN: Objection to form.

8 A. Well, Dr. Colby is a scientist, and I
9 would see him at medical meetings, and I just
10 assumed he was following the smoking and health
11 situation and listening to papers being reported
12 at scientific sessions.

13 Q. Did you ever see him in the offices of
14 CTR?

15 A. I just cannot recall. I may have, but
16 I don't remember.

17 Q. Did you ever have any discussions with
18 Dr. Colby about the Literature Retrieval
19 Division?

20 A. Not that I can remember.

21 Q. Did Dr. Colby ever tell you about

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1 literature that he collected for R.J. Reynolds?

2 A. No.

3 Q. Ever hear of L. S., Inc.?

4 A. I'm sorry?

5 Q. L. S., Inc.?

6 A. No.

7 MR. KLUGMAN: That's incorporated, not
8 a writing specimen.

9 A. Right. Not ink company.

10 Q. Ever here of IS&R?

11 A. No.

12 Q. Ever hear of Simon O'Shea?

13 A. Yes.

14 Q. Who was Simon O'Shea?

15 A. He was a man that worked at Hill &
16 Knowlton, I don't remember when or for how long,
17 but he worked on the CTR account, or maybe it was
18 the Tobacco Institute account as well, I don't
19 remember.

20 I believe, but I'm not quite sure about
21 my recollection, that he, at some point, after I

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1 had left Hill & Knowlton, he left and set up a
2 company of his own.

3 What it did, I don't know. I have a
4 vague memory that he did some work for either the
5 Tobacco Institute or a company, a tobacco
6 company, I'm not sure.

7 Q. You know about the law firm of
8 Covington & Burling, correct?

9 A. Yes.

10 Q. Is it your recollection that Simon
11 O'Shea worked for Covington & Burling?

12 MR. KLUGMAN: Objection to form.

13 Q. Or performed services for Covington &
14 Burling?

15 A. I never knew that.

16 Q. You knew Addison Yeaman, correct?

17 A. Yes.

18 Q. Addison Yeaman was a former general
19 counsel at Brown & Williamson, and when he
20 retired, he took the job that Henry Ramm had, you
21 remember that, sir?

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1 MR. KLUGMAN: Object to form.

2 A. Yes, I do.

3 Q. What do you recall Addison Yeaman's
4 title to be when he took over for Henry Ramm?

5 MR. KLUGMAN: Objection to the form.

6 A. You mean what his title was at CTR?

7 Q. Yes, sir.

8 A. I believe he was chairman.

9 Q. Did Mr. Yeaman work full time at CTR's
10 New York offices when he was the chairman?

11 A. I don't recall any chairman who came to
12 CTR after retiring from a tobacco company, who
13 spent full time at the office.

14 I mean show, well, I don't know if they
15 showed up every day, because I was not there
16 every day, but they all maintained homes where
17 they had been living when they were with their
18 respective companies.

19 And as far as I know, they continued to
20 live there but came to New York frequently.

21 Q. When you formed your consulting

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1 company, was it your practice to work at the
2 offices of CTR?

3 A. Yes. They gave me an office there, and
4 I would come in frequently.

5 Q. Was it your practice to spend Monday
6 through Friday at the office?

7 A. Only if there was something going on,
8 where my presence was needed every day for a
9 week.

10 Q. Were you compensated on an hourly
11 basis, or did you have an annual retainer?

12 MR. KLUGMAN: Objection to the form.

13 A. An annual retainer, sorry.

14 Q. Was that paid out in weekly
15 installments or monthly installments?

16 MR. KLUGMAN: Objection to the form.

17 A. Monthly.

18 Q. And this retainer was considered,
19 strike that.

20 Did you have a contract with CTR?

21 A. I got a cramp. Excuse me.

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1 MR. KLUGMAN: You want to take a break
2 for a minute?

3 THE WITNESS: No. That's okay. It is
4 just that I don't like to sit too long, and I
5 rarely do. It was under a contract.

6 Q. Was it an annual basis or a number of
7 years?

8 MR. KLUGMAN: Could I hear that again?

9 MR. HOSKINS: Was the contract on an
10 annual basis or a number of years, do you
11 remember?

12 MR. KLUGMAN: Objection to form.

13 A. The only multiyear contract I had that
14 I can recall was for the first two years, to make
15 sure that I was going to get along with them and
16 they were going to get along with me, and that I
17 would have an income for two years, and after
18 that, it was annual.

19 Q. And when was the contract renewed, do
20 you remember what part of the calendar year it
21 was that it came up for renewal?

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1 MR. KLUGMAN: Objection to the form.

2 A. Probably in the summer, I would guess.

3 Q. And your contract had to be approved by
4 the CTR board of directors, fair statement?

5 MR. KLUGMAN: Objection to the form.

6 A. I don't know. Whoever was chairman
7 would approve it.

8 Q. We talked earlier about the member
9 companies. You understood that these member
10 companies contributed to the budget of the
11 Council for Tobacco Research, correct?

12 A. Yes.

13 Q. You understood that the contribution
14 was based on market share, correct?

15 MR. KLUGMAN: Objection to the form.

16 A. I believe so.

17 Q. You understood that the board of
18 directors also had a chairmanship, correct?

19 MR. KLUGMAN: Objection to the form.

20 A. I'm not sure I understand what you
21 mean. You mean there was a chairman of the board

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1 of directors of CTR?

2 Q. Isn't that your understanding, sir?

3 A. Well, isn't it always the case?

4 Q. It may be, but I'm wondering if you
5 recall that, sir?

6 A. No.

7 Q. Do you recall that the chairmanship was
8 rotating, is that your recollection?

9 MR. KLUGMAN: Objection to the form.

10 A. That sounds familiar.

11 Q. And it rotated from tobacco company to
12 tobacco company. Does that refresh your
13 recollection?

14 MR. KLUGMAN: Objection to the form.

15 A. I believe so, but I would not want the
16 swear to it really.

17 Q. Have you ever heard of something called
18 the Committee of Counsel?

19 A. Yes.

20 Q. And what is your understanding about
21 the Committee of Counsel? What does that mean?

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1 MR. KLUGMAN: Objection to the form.

2 A. I believe it was composed of lawyers
3 from each of the member companies, as well as
4 their outside legal representatives.

5 Q. Now, referring to the outside legal
6 representatives, did you ever hear of a term
7 called Ad Hoc Committee?

8 A. Yes. I have heard of it.

9 Q. Your understanding was the Ad Hoc
10 Committee was made up of these outside legal
11 representatives, correct?

12 MR. KLUGMAN: Objection.

13 A. That may well be. I would, I really
14 don't know for sure, but I believe that's so.

15 MR. KLUGMAN: Mr. Zahn, let me just
16 instruct you. The fact that Mr. Hoskins tells
17 you or suggests that something is true doesn't
18 mean it is true. Please test to the best of your
19 knowledge.

20 Q. Generally it does mean it is true,
21 sir. I wouldn't know it otherwise.

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1 A. You can guess like I try not to.

2 MR. KLUGMAN: That's what we are trying
3 to avoid. Seriously, don't subscribe to his
4 statements, unless you believe them to be true,
5 and in that case, obviously you will subscribe to
6 it.

7 THE WITNESS: He seems like such a nice
8 honest fellow.

9 MR. HOSKINS: Appreciate that. Thank
10 you, sir.

11 MR. KLUGMAN: You know about books and
12 covers and those sorts of things.

13 Q. From time to time, you recall the
14 Committee of Counsel holding meetings at CTR's
15 offices?

16 MR. KLUGMAN: Objection to the form.

17 A. I really don't know about that.

18 Q. Let me ask you if you recall certain
19 names. You knew David Hardy, fair statement?

20 A. Yes.

21 Q. David Hardy was a name partner at

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1 Shook, Hardy & Bacon, correct?

2 A. Yes.

3 Q. When do you recall first meeting David
4 Hardy?

5 MR. KLUGMAN: Objection to the form.

6 A. 1960.

7 Q. What were the circumstances of that
8 meeting, do you recall?

9 A. Dave Hardy attended a trial in
10 Pittsburgh.

11 Q. Do you remember the name of that case?

12 A. Give me a moment. I think it was
13 Prichard. I'm not sure.

14 Q. And do you remember who the defendants
15 in that case were?

16 A. I believe Liggett & Meyers was a
17 defendant, and I know at least one other tobacco
18 company was, maybe more, but I am really not sure
19 of the names.

20 Q. Did you observe the trial?

21 A. Yes.

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1 Q. You were assigned to observe the trial
2 by the Council for Tobacco Research?

3 MR. KLUGMAN: Objection to the form.

4 A. No. I was sent there by my boss at
5 Hill & Knowlton.

6 Q. And what was the name of your boss who
7 sent you there?

8 A. In Carl Thompson.

9 Q. And what did you understand your
10 assignment was at this trial?

11 A. To make a, to write a summary of each
12 day's highlights or proceedings, and at the time,
13 dictated to somebody in my office in New York.

14 Q. You dictated it over telephone,
15 correct?

16 A. Yes.

17 Q. You, in fact, prepared that summary,
18 correct?

19 A. Yes.

20 Q. Do you understand what happened, do you
21 have any knowledge what happened to the summary

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1 after it was prepared?

2 A. Yes.

3 Q. What happened to the summary?

4 A. It was sent to member company people.

5 Q. And David Hardy, was he participating
6 in the trial or observing?

7 MR. KLUGMAN: Objection to the form.

8 A. As I recall, he was an observer.

9 Q. And was he introduced to you?

10 A. I guess so, I did meet him and talk to
11 him.

12 Q. Did you meet with David Hardy --

13 MR. KLUGMAN: Excuse me. Are you
14 getting my voice? I just noticed, I don't have
15 what these other guys have.

16 MR. HOSKINS: It fell on the floor.

17 MR. KLUGMAN: Excuse me.

18 THE WITNESS: How did you get away with
19 that?

20 MR. HOSKINS: I pulled it off.

21 Q. After your first meeting with David

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1 Hardy, is it fair to say you met with him from
2 time to time until he died in 1976, correct?

3 MR. KLUGMAN: Objection to form.

4 A. Well, I was at meetings where he was.
5 I'm sure I was at lunches where he was, things of
6 that kind.

7 I don't recall specific appointments,
8 but, yes, I did see Dave Hardy from time to time.

9 Q. You have heard of something called the
10 Communications Committee, correct?

11 A. Yes.

12 Q. That's a committee of the Tobacco
13 Institute, correct?

14 A. Yes.

15 Q. You were a member of the Communications
16 Committee, correct?

17 A. Yes.

18 Q. And David Hardy also was a member of
19 the Communications Committee while he was alive,
20 correct?

21 MR. KLUGMAN: Objection to the form.

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1 A. I don't remember that. But he may well
2 have been.

3 Q. How often did the Communications
4 Committee of the Tobacco Institute meet, do you
5 recall?

6 A. No. I do not.

7 Q. Those meetings took place in
8 Washington, D.C., correct?

9 MR. KLUGMAN: Objection to the form.

10 A. I believe so.

11 Q. Sometimes they took place in law
12 offices located in New York, is that correct?

13 MR. KLUGMAN: Objection to the form.

14 A. I don't recall having attended a
15 meeting in a law office in New York. I may have,
16 but I don't remember.

17 Q. You knew Mr. Kloepper, correct?

18 A. Yes.

19 Q. He served on the Communications
20 Committee, correct?

21 MR. KLUGMAN: Objection to the form.

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1 A. Yes.

2 Q. You knew Mr. Pittman from Brown &
3 Williamson, correct?

4 A. Yes.

5 Q. He was Brown & Williamson's appointee
6 to the Communications Committee?

7 A. I guess so.

8 MR. KLUGMAN: Objection to the form.
9 Again, Mr. Zahn tell him what you know.

10 Q. Tell me the names of other members that
11 you recall of the Communications Committee?

12 A. I believe Jim Bowling of Philip Morris
13 was a member. I don't think American Tobacco or
14 American Brands whatever was a member of the
15 Institute at the time. I'm not sure. I don't
16 know if anybody from American attended. I just
17 don't recall anybody, any names.

18 Lorillard. I don't remember anybody
19 from Lorillard. And I think there was somebody
20 from Liggett & Meyers on the committee, Dan --
21 wait just a moment -- Provost.

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1 Q. How about from RJR?

2 A. Oh, yes, that would have been Charles
3 Wade.

4 Q. We talked about David Hardy. You knew
5 William Shinn, Mr. Hardy's partner, correct?

6 A. Yes.

7 Q. You knew Donald Hohl?

8 A. Yes.

9 Q. You knew Robert Northrip?

10 A. Yes.

11 Q. You knew Pat Sirridge, correct?

12 A. Yes.

13 Q. You knew Ed Jacob, correct?

14 A. Yes.

15 Q. You knew for several years, Ed Jacob
16 and his firm served as general counsel for the
17 Council for Tobacco Research, correct?

18 MR. KLUGMAN: Objection to form.

19 A. Yes.

20 Q. And you also understood that Ed Jacob
21 represented R.J. Reynolds as an outside counsel.

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1 correct?

2 A. I don't believe I knew that. If I did,
3 I have forgotten it.

4 Q. You know Janet Brown?

5 A. Yes.

6 Q. Janet Brown helped you draft your
7 employment contract or your consulting contract
8 with CTR, correct?

9 A. Yes.

10 Q. She suggested that you put certain
11 indemnity language in that contract, correct?

12 A. As I recall.

13 Q. Janet Brown was a partner for which New
14 York law firm?

15 A. I can't remember the name of the law
16 firm.

17 Q. She was a partner in Chadborne & Park,
18 correct?

19 A. Ah, yes, right.

20 Q. And Janet Brown and Chadborne & Park
21 represented which tobacco company?

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1 A. American.

2 Q. You knew or know Alexander Holtzman,
3 correct?

4 A. Yes.

5 Q. You knew Thomas Ahrensfield, correct?

6 MR. KLUGMAN: Can you get clear whether
7 it is past tense or present? I can't always
8 hear, and you're jumping back and forth. I don't
9 know whether it matters.

10 Q. Present tense. You know Thomas
11 Ahrensfield, correct?

12 A. Yes.

13 Q. You talked about Mr. Yeaman, you also
14 knew Mr. Pepples, correct?

15 A. Yes.

16 Q. Ever meet Kendrick Wells?

17 A. I don't remember.

18 Q. You knew that Mr. Holtzman and
19 Mr. Ahrensfield worked for Philip Morris, correct?

20 A. Yes.

21 Q. You knew that Mr. Pepples, like

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1 Mr. Yeaman, worked for Brown & Williamson,
2 correct?

3 A. Yes.

4 Q. Do you remember, you knew Mr. Greer,
5 Joseph Greer, correct?

6 A. Reynolds, R.J. Reynolds?

7 Q. Liggett.

8 A. Well, then, yes, I knew him. I
9 misconnected the company.

10 Q. You knew Arthur Stevens, correct?

11 A. Yes.

12 Q. Who did Arthur Stevens represent, do
13 you remember?

14 A. Lorillard.

15 Q. And, sir, do you recall attending
16 meetings of the Committee of Counsel at any
17 time?

18 A. I do not remember. I may have, but I
19 do not recall.

20 Q. You recall, however, attending meetings
21 where general counsel from the member companies

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1 were present, correct?

2 MR. KLUGMAN: Objection to the form.
3 You mean all of them or some of them?

4 Q. Some of them. You recall attending
5 some meetings where lawyers representing the
6 companies were present?

7 A. Yes. I believe so.

8 MR. HOSKINS: Why don't we take our
9 first break?

10 THE WITNESS: Okay.

11 VIDEO OPERATOR: Going off the record.
12 The time is 10:16.

13 (Break.)

14 VIDEO OPERATOR: Back on the record.
15 The time is 10:38.

16 Q. We're back from our first break. How
17 are you doing, sir?

18 A. Very well, thank you.

19 Q. Did you have any formal scientific
20 training in college?

21 A. Just a chemistry course, maybe botany,

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1 biology, things of that kind.

2 Q. Did you take any course work in formal
3 scientific training after graduating?

4 A. No.

5 Q. Can you estimate --

6 A. No. Well, I did take a course, a
7 course, I attended a one- or two-day session for
8 science writers that the American Cancer Society
9 set up with their Director of Statistics,
10 Dr. Hammond, many, many years ago.

11 Q. Now, what was Dr. Hammond's first name,
12 do you remember?

13 A. E. Cuyler, C-u-y-l-e-r.

14 Q. Was this before or after 1970, that you
15 attended this?

16 A. I don't remember. I would guess it was
17 before, but I'm not sure.

18 Q. Who is Oscar Auerbach?

19 A. He was a pathologist.

20 Q. Do you remember where he worked?

21 A. He worked at a Veterans Administration

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1 Hospital in, I think, New Jersey, but I'm not
2 sure.

3 Q. You recall the Hammond and Auerbach
4 study dealing with smoking beagles, correct,
5 sir?

6 A. Yes.

7 Q. Directing your attention back to the
8 CTR, you have heard of a term known as the
9 Scientific Advisory Board, the SAB, correct?

10 A. Yes.

11 Q. You have also heard of something known
12 as the Industry Technical Committee, correct,
13 sir?

14 A. Yes.

15 Q. Tell the jury what the Industry
16 Technical Committee was.

17 A. It was a committee comprised or
18 composed of the chief scientific officers of the,
19 as I recall that's who they were, of the various
20 companies, tobacco companies.

21 Q. And you knew Dr. Murray Senkus,

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1 correct?

2 A. Yes.

3 Q. He served on the Industry Technical
4 Committee and represented R.J. Reynolds, do you
5 remember that, sir?

6 MR. KLUGMAN: Objection to form.

7 A. I'm not sure whether he was the one,
8 but it seems that that's a reasonable point.

9 MR. KLUGMAN: Can I just ask the camera
10 man whether this glass is visible?

11 VIDEO OPERATOR: It totally is.

12 MR. KLUGMAN: It is?

13 VIDEO OPERATOR: It is.

14 MR. KLUGMAN: Why don't you move it off
15 the table.

16 Q. You knew Dr. Wally Hughes, correct?

17 A. Yes.

18 Q. He was Research Director Brown &
19 Williamson Tobacco Company, correct?

20 MR. KLUGMAN: Objection to the form.

21 A. I'm not sure of his exact title.

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1 Q. Dr. Wally Hughes was on the Industry
2 Technical Committee, correct?

3 A. Uh-huh. I can't swear for the exact
4 membership at any time.

5 Q. You attended meetings where Dr. Hughes
6 was in attendance; do you remember that, sir?

7 MR. KLUGMAN: Objection to form.

8 A. I really don't remember. I believe,
9 well, I would be guessing. I'm not guessing, but
10 I know I was at places where Wally Hughes was
11 present. Whether it was a meeting or not, I'm
12 not sure.

13 Q. Helmut Wakeham, did you know Wakeham?

14 A. Yes.

15 Q. Who did you understand Wakeham to be?

16 A. He was with Philip Morris, and I am not
17 sure what his title was, vice-president research,
18 I'm not sure.

19 Q. Did you know Thomas Osdene?

20 A. Yes.

21 Q. Who was Osdene?

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1 A. He also was a scientist with Philip
2 Morris.

3 Q. How about Preston Leake?

4 A. Yes. I knew him.

5 Q. Who was Preston Leake?

6 A. He was a scientist at American Tobacco
7 Company.

8 Q. Do you remember the names of any of the
9 scientists at Lorillard?

10 A. Yes. The man who is now, I believe,
11 president, unless he has retired in the last
12 several years.

13 Q. Alexander Spears, correct?

14 A. Thank you for reminding me of his name.

15 Q. He retires next month.

16 A. Does he?

17 Q. Yes, sir. Do you recall any other
18 industry researchers who served or may have
19 served on the Industry Technical Committee of the
20 CTR?

21 MR. KLUGMAN: Objection to the form.

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1 A. One name comes to mind, although I did
2 not meet him or see him often, Bates, Bill
3 Bates. I believe he was with L&M, Liggett &
4 Meyers.

5 Q. Now, you understood, sir, that the
6 Scientific Advisory Board was involved in
7 something known as the grant in aid program of
8 the Council for Tobacco Research, correct?

9 A. Yes.

10 Q. You also understood that, beginning
11 with Henry Ramm's tenure as chairman, the Council
12 for Tobacco Research started performing contract
13 research, correct?

14 MR. KLUGMAN: Objection to the form.

15 A. I don't know when that began. But I
16 know that there were contracts.

17 Q. And one of those contracts was with an
18 organization known as MAI, correct, sir?

19 MR. KLUGMAN: Objection to the form.

20 A. Yes.

21 Q. What do you recall MAI standing for, do

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1 you remember, sir?

2 A. Microbiological Associates,
3 Incorporated.

4 Q. And the CTR entered into contract
5 research with MAI that lasted over how many
6 years, do you remember?

7 MR. KLUGMAN: Objection to the form.

8 A. At least ten years.

9 Q. And that research was performed in
10 Bethesda, Maryland, do you recall, sir?

11 A. I have never been there, but I think
12 that's where their buildings were.

13 Q. And what were the names of the
14 scientists at MAI that you were familiar with, if
15 any?

16 A. There are just two names I recall,
17 Richard Kouri, I'm not sure how that is spelled,
18 I think it is K-h-o-u-r-i.

19 MR. KLUGMAN: You got it?

20 THE REPORTER: Yes.

21 A. And Carol Henry.

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1 Q. What did you understand Kouri's
2 position to be?

3 MR. KLUGMAN: Objection to form.

4 A. I'm not sure what his title was.

5 Q. And how about Henry, do you recall her
6 position?

7 A. No.

8 Q. What did you understand the type of
9 work that was being performed at MAI to be?

10 MR. KLUGMAN: You mean under contract
11 with CTR?

12 MR. HOSKINS: Yes, sir.

13 A. It was a huge project in which
14 thousands of mice were exposed to inhalation of
15 tobacco smoke.

16 Q. And what, it was mice, correct, mice
17 was the laboratory animal, correct, sir?

18 A. I believe so.

19 Q. Do you remember how many mice were
20 exposed over the years of the contract?

21 MR. KLUGMAN: Objection to the form.

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1 A. I think at least ten thousand.

2 Q. Now what the blue book is, correct,
3 sir?

4 A. In this regard, yes.

5 Q. What did you understand the blue book
6 to be as it related to MAI?

7 A. That was the published book comprising
8 the report of this huge project, smoke exposure
9 project.

10 Q. Do you remember when the blue book was
11 published?

12 A. Ten or twelve years ago, I think.

13 Q. You wrote a press release about
14 publication of the blue book. Do you recall
15 that, sir?

16 A. Yes

17 Q. With reference to the date of
18 publication of the blue book, how does that
19 relate to the date that the research stopped? Do
20 you remember?

21 MR. KLUGMAN: Objection to the form.

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1 A. I'm not sure when the project was
2 completed. It was completed, of course, before
3 the, I believe, it was completed long before the
4 report, the blue book, was published, perhaps a
5 year or two before.

6 Q. Did you have any role in drafting the
7 blue book?

8 A. No.

9 Q. Did you have any role in drafting the
10 introduction to the blue book?

11 A. No.

12 MR. KLUGMAN: Objection to form.

13 Q. Do you know what benzo[a]pyrene is,
14 sir?

15 A. Yes.

16 Q. What is benzo[a]pyrene?

17 A. It is a chemical that is found in the
18 smoke of various organic materials.

19 Q. Did you know Dr. Alan Rodgman at RJR?

20 A. Yes. Another name from the distant
21 past.

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1 Q. Did you -- strike that.

2 Did you ever learn that Dr. Alan
3 Rodgman isolated benzo[a]pyrene in RJR cigarette
4 products?

5 MR. KLUGMAN: Objection to the form.

6 A. I did not know that.

7 Q. You understood, however, sir, that
8 benzo[a]pyrene had been isolated in tobacco
9 smoke, correct, sir?

10 MR. KLUGMAN: Objection to the form.

11 A. I know I have read reports saying that
12 there is benzo[a]pyrene in cigarette smoke
13 condensate.

14 Q. Ever hear of benzo[e]pyrene?

15 A. Yes.

16 Q. What do you understand benzo[e]pyrene
17 to be?

18 MR. KLUGMAN: Objection to the form.

19 A. A form of benzopyrene, but exactly
20 what, I don't remember.

21 Q. You understood that there are published

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1 reports that benzo[el]pyrene was found in
2 fractions of the tobacco smoke, correct?

3 MR. KLUGMAN: Objection to the form.

4 A. I believe so.

5 Q. Tell the jury what it means to have a
6 fraction of tobacco smoke, as you understand that
7 term.

8 MR. KLUGMAN: Objection to the form.

9 A. Well, it's a fraction of cigarette
10 smoke or tobacco smoke condensate, I believe, and
11 it would pertain to some isolate from that.

12 Q. Did you ever hear of
13 methylcholanthrene?

14 A. Yes.

15 Q. What is methylcholanthrene?

16 MR. KLUGMAN: Objection to the form.

17 A. It is an animal carcinogen, I believe.

18 Q. You have used the term carcinogen, and
19 you used the term animal carcinogen. What do you
20 mean when you use the term carcinogen?

21 A. I know that there have been experiments

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1 reporting that a chemical has produced cancer or
2 what seemed to be cancer in animals or tissues;
3 but, certainly, nobody takes that chemical and
4 gives it to a human.

5 Q. And why is that, sir?

6 A. Why is what?

7 Q. Why is it, sir, that we don't
8 experiment on humans to determine whether or not
9 chemicals are carcinogenic?

10 MR. KLUGMAN: Objection to the form.

11 A. They might have done it in Nazi
12 Germany, but we don't do it in civilized
13 societies.

14 Q. You understand in civilized societies,
15 you attempt to develop an animal model to test
16 whether something is a carcinogen, correct?

17 MR. KLUGMAN: Objection to the form.

18 A. Well, they are getting away from animal
19 testing now, as you probably know, trying to work
20 out computer techniques.

21 Q. But when MAI was doing the inhalation

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1 studies, they were trying to develop something
2 known as an animal model to test whether or not
3 something caused cancer in humans, fair
4 statement?

5 MR. KLUGMAN: Objection to the form.

6 A. I'm not sure whether that was part of
7 the protocol or not, that particular language,
8 which I rather doubt it.

9 They were trying, as I recollect, to
10 devise or search for a model for animal
11 inhalation carcinogenesis.

12 Q. And why was it that MAI was concerned
13 with whether or not smoke could cause cancer in
14 mice?

15 MR. KLUGMAN: Objection to the form.
16 No foundation.

17 A. They were a commercial firm keeping
18 busy with a contract to develop this, seeking to
19 develop a good, working, usable model.

20 Q. Did you have any understanding what
21 this model would ultimately be used for in?

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1 MR. KLUGMAN: Objection to the form.

2 A. I guess it would be used for what all
3 scientific studies are for, the provide further
4 information to go on to something else, or just
5 go on further.

6 Q. You understood, sir, or strike that,
7 did you understand that what MAI was studying was
8 whether or not they could find a cure for cancer
9 in mice?

10 MR. KLUGMAN: Objection to form.

11 A. I don't recall anything like that.

12 Q. Did you understand whether or not MAI
13 was solely focused on whether mice who smoked
14 could get cancer?

15 MR. KLUGMAN: Objection to the form.

16 A. Well, that was the, as I understand it,
17 the purpose of the study, the project.

18 Q. And you understood, sir, that the
19 results of this investigation would be used to
20 determine whether or not smoking caused disease
21 in humans; isn't that correct, sir?

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1 MR. KLUGMAN: Objection to form. Go
2 ahead.

3 A. It could have been used by some to
4 extrapolate the findings to that.

5 Q. In fact, you understood, sir, as a
6 scientific writer, that we study experimental
7 animals, not because we are concerned with
8 diseases that may occur in animals, but because
9 we are concerned with diseases that may occur in
10 humans, correct?

11 A. There was that relationship, of course.

12 Q. And that is because, as I testified
13 previously, this is not Nazi Germany and we can't
14 experiment on humans, correct?

15 A. Absolutely.

16 Q. Another contract that CTR entered into
17 was with an organization called Bioresearch,
18 Incorporated, correct?

19 MR. KLUGMAN: That's not the right name
20 of the entity, but go ahead.

21 Q. Let me retract that. You know

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1 Dr. Freddy Homberger, correct?

2 A. Yes.

3 Q. What was the name of Dr. Homberger's
4 entity?

5 A. I don't know. I know he had one. I
6 don't remember what it was.

7 Q. You never heard Bioreserach?

8 A. Yes, I believe that. I'm sure I'd
9 remember that now. Whether that was full name, I
10 don't know.

11 Q. Dr. Homberger was doing inhalation
12 studies with a Syrian hamster as the animal?

13 A. As I remember, yes.

14 Q. Now, sir, did you ever learn that
15 methylcholanthrene had been isolated by
16 Dr. Rodgman in tobacco smoke condensate?

17 A. I don't remember that.

18 Q. Now, in addition to the Scientific
19 Advisory Board, there were full time -- strike
20 that.

21 Leaving aside the Scientific Advisory

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1 Board, from time to time there was a full-time
2 staff at the Council for Tobacco Research,
3 correct?

4 A. Yes.

5 Q. And during your consultancy, you knew
6 Dr. Gardner, correct?

7 A. Yes.

8 Q. And at one point, Dr. Gardner was a
9 Scientific Director in CTR, you remember that,
10 sir?

11 A. Yes.

12 Q. You also knew a Dr. Hockett, correct?

13 A. Yes.

14 Q. Dr. Hockett was a research director at
15 CTR, do you remember that?

16 A. Yes.

17 Q. You also knew Vincent Lisanti,
18 correct?

19 A. Yes.

20 Q. Vincent Lisanti's training in was in
21 dentistry, correct?

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1 MR. KLUGMAN: Objection to the
2 question.

3 A. Yes.

4 Q. You knew Charlie Summers, correct?

5 A. Yes.

6 Q. He was a pathologist, correct?

7 A. Yes.

8 Q. At some point Charlie Summers became
9 the Scientific Director at CTR, correct?

10 A. Yes.

11 Q. You knew Harmon McAllister, correct?

12 A. Yes.

13 Q. You know James Glenn, correct?

14 A. Yes.

15 Q. What positions did Mr. McAllister hold
16 at CTR?

17 A. Dr. McAllister, I think, became
18 Scientific Director. I can't recall clearly.

19 Q. Before Dr. McAllister, James Glenn was
20 the Scientific Director, do you recall that,
21 sir?

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1 A. No. I don't. I know Glenn was
2 chairman and president. He may also have been
3 Scientific Director at some time. I don't
4 remember that specifically.

5 Q. You recall the time when Charlie
6 Summers was Scientific Director, correct?

7 A. Yes. I know he was.

8 Q. Prior to becoming scientific director,
9 he was a member of the Scientific Advisory Board,
10 correct?

11 A. Yes, I believe so.

12 Q. Members of the Scientific Advisory
13 Board were paid an honorarium, correct?

14 MR. KLUGMAN: Objection to the form.

15 A. For when they attended meetings, yes.

16 Q. Sometimes you called it a per diem,
17 correct?

18 A. Yes.

19 Q. And how often did the Scientific
20 Advisory Board meet while you were a consultant
21 for CTR?

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1 A. Three times a year.

2 Q. Were they regularly scheduled
3 meetings?

4 A. Yes.

5 Q. When did the three meetings occur?

6 A. I believe one was in the spring, one
7 was in the fall, and one was during the winter.

8 Q. And during these meetings, research
9 proposals were considered for funding, correct?

10 A. At two of them.

11 Q. Which two meetings were research
12 proposals considered?

13 A. The spring and the fall.

14 Q. What happened at the winter meeting, if
15 anything?

16 A. The winter meeting was a sort of a
17 think tank type of meeting. A number of things
18 could happen there.

19 There might be a visiting lecturer, so
20 to speak. There might be a visiting lecturer who
21 was being considered for an invitation to join

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1 the Scientific Advisory Board.

2 They would invite him or her to come
3 with a spouse and spend a few days socializing
4 with the Advisory Board.

5 There might be a discussion of some
6 major project or some major subject, things of
7 that kind.

8 There were not, as I recall, any
9 grants, no applications were brought up for
10 discussion at the winter meeting.

11 Q. In the spring and fall meeting when the
12 Scientific Advisory Board considered
13 applications, they graded the applications,
14 correct?

15 A. Yes.

16 MR. KLUGMAN: Please wait until he
17 finishes, Mr. Zahn.

18 Q. And they assigned funding based on the
19 grading of the applications, correct?

20 MR. KLUGMAN: Objection to the form.

21 A. An application that got a poor rating

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1 might not be funded.

2 Q. And they also assigned funding, based
3 on the funds available, correct, sir?

4 MR. KLUGMAN: Objection to the form.

5 A. Yes.

6 Q. And you understood that each January,
7 the grant in aid budget came up for approval by
8 the board of directors, correct?

9 MR. KLUGMAN: Objection to the form.

10 A. I'm not sure what it did, when that
11 happened.

12 Q. You understood that the grant in aid
13 budget was approved on an annual basis, though,
14 correct?

15 A. I believe so.

16 Q. You also knew Dr. Kreisher, correct?

17 A. Yes.

18 Q. Dr. Kreisher was hired by Dr. Little,
19 correct?

20 MR. KLUGMAN: Objection to the form.

21 A. I don't remember.

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1 Q. Where was your office in relationship
2 to Dr. Kreisher's office?

3 A. I believe it was several floors up.
4 Well, there was one time I was, I believe, at the
5 end of the row, the last office. But I'm not
6 sure that I recall that exactly.

7 Q. Have you ever -- strike that.
8 When Dr. Kreisher was at CTR, do you
9 ever recall being in his office?

10 A. Oh, I'm sure I was.

11 Q. Do you ever recall seeing the chart
12 that he had hanging behind his desk?

13 MR. KLUGMAN: Objection to the form.

14 A. No. I don't.

15 Q. Ever hear of something called the
16 tissue paper chart?

17 A. I don't remember that phrase.

18 Q. Ever see the chart entitled Stages in
19 Carcinogenesis behind his desk?

20 A. No. I don't.

21 MR. KLUGMAN: I'm sorry, did you say

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1 you didn't see it, or you don't remember?

2 THE WITNESS: No. I don't remember
3 having seen it.

4 Q. Who was Donald Ford?

5 A. He was an Associate Scientific Director
6 at CTR.

7 Q. What was Dr. Kreisher's title when he
8 worked for CTR?

9 A. I believe he had the same title.

10 Q. When was Dr. Ford hired, do you
11 remember?

12 A. No. I do not.

13 Q. When did Dr. Kreisher leave the employ
14 of the Council for Tobacco Research?

15 A. I don't remember.

16 Q. You don't remember the date. Do you
17 remember when it occurred, sir? Do you have any
18 recollection of the time that Dr. Kreisher left
19 CTR?

20 A. I'm sure I did. No. I just don't
21 recall.

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1 Q. Is Dr. Ford still an Associate
2 Scientific Director at CTR?

3 A. I have no idea. -

4 Q. Was Dr. Ford Associate Scientific
5 Director for CTR when you stopped your consulting
6 for CTR?

7 A. Yes.

8 Q. Now, in addition to the SAB meetings,
9 do you recall that there were formal meetings
10 where research was discussed with the Industry
11 Technical Committee representatives?

12 MR. KLUGMAN: Objection to the form.

13 A. I don't recall any such meetings with
14 the ITC.

15 Q. Do you recall meetings where the staff
16 of CTR would brief company representatives on
17 research that was going on under contract?

18 A. I don't believe I ever attended any
19 such meetings. I don't recall any such meetings.

20 Q. Do you know who Kastenbaum is,
21 correct?

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1 A. Marvin Kastenbaum?

2 Q. Yes, sir.

3 A. Yes.

4 Q. Who is Kastenbaum?

5 A. He was a statistician, I believe, who
6 worked for the Tobacco Institute.

7 Q. Who is Tom Hoyt, do you remember?

8 A. He was at one time president the
9 Council. He was with them from the very
10 beginning.

11 Q. Okay. How about Dr. Abood? Do you
12 remember Dr. Abood?

13 A. Yes.

14 Q. What did Dr. Abood study, do you
15 remember?

16 A. No. I don't recall. I know he was a
17 member -- he became a member of the Scientific
18 Advisory Board.

19 Q. Who was Campbell?

20 A. John Campbell?

21 Q. Yes, sir.

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1 A. John Campbell was a representative of a
2 British company or maybe a cigarette manufacturer
3 in England who lived and worked in this country.

4 Q. Do you remember the name of that
5 company?

6 A. If, indeed, it was a tobacco company,
7 no, I don't.

8 Q. Was it Imperial?

9 A. Yeah, I believe it was.

10 Q. Do you recall when Donald Ford,
11 Dr. Donald Ford, started at CTR?

12 A. I believe it was about when I became my
13 own consultant to CTR, but I could be wrong.

14 MR. HOSKINS: Let me have 20336.

15 Q. Stir, I'm going to hand you what we
16 will mark as Exhibit 20336 in this deposition.
17 My first question is whether or not you recognize
18 the handwriting.

19 MR. KLUGMAN: Before you do that,
20 Mr. Hoskins, I infer from the markings on this
21 document, that this is not one of the documents

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1 that was provided to Congress and placed on the
2 Internet.

3 MR. HOSKINS: It is not one of the
4 deprived documents. I don't know whether it
5 was ever provided to Congress or not.

6 MR. KLUGMAN: Not provided to Congress
7 as part of the group. I don't want to argue
8 about semantics, it looks like we are both
9 talking about the same thing, but it looks like
10 this was produced independent of that in another
11 lawsuit.

12 Q. Do you recognize the handwriting, sir?

13 A. No. I do not.

14 Q. You see the reference at the top there,
15 CTR meeting New York City, November 22, '77?

16 A. Yes.

17 Q. If you look at the fifth column, the
18 third line down, you see the name Zahn?

19 A. Yes.

20 Q. The first column we talked about that
21 is Donald Hohl, correct?

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1 A. Yes.

2 Q. A lawyer with Shook, Hardy & Bacon?

3 A. Yes.

4 Q. That's Vince Lisanti, a dentist with
5 CTR, correct?

6 MR. KLUGMAN: Objection to the form.

7 A. Yes.

8 Q. Schultz, do you know who Schultz was?

9 A. I don't know him at all, or her. I
10 don't know whether it was a man or a woman.

11 Q. The next name is Kastenbaum, with the
12 Tobacco Institute?

13 A. Yes.

14 Q. Statistician, correct?

15 A. Yes. I believe he was a statistician
16 or still is. I'm not sure he is even alive now.

17 Q. He's alive. Next is Senkus and F.
18 Colby, that is Frank Colby, from RJR, correct?

19 A. Yes.

20 Q. The next name is Hughes, that is Wally
21 Hughes from Brown & Williamson, correct?

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- 1 A. Yes.
- 2 Q. And then we have Kreisher, that is
- 3 Dr. Kreisher?
- 4 A. Uh-huh.
- 5 Q. And we this Add Yeaman. Okay, he was
- 6 the chairman of the CTR in '77, do you remember,
- 7 sir?
- 8 A. If, well, I don't remember what years,
- 9 I don't recall what years he was there.
- 10 Q. We see Tom Hoyt's name, correct?
- 11 A. Yes.
- 12 Q. He was with CTR, correct?
- 13 A. Yes.
- 14 Q. You see Hockett's name in the next
- 15 column?
- 16 A. Yes.
- 17 Q. We see Abood's name?
- 18 A. Yes.
- 19 Q. We see Gardner's name?
- 20 A. Uh-huh.
- 21 Q. We see Mr. Campbell's name, correct?

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1 A. Yes.

2 Q. We talked about all of those
3 individuals previously, correct?

4 A. Yes.

5 Q. You see Summers' name?

6 A. Yes.

7 Q. You see your name?

8 A. Yes.

9 Q. You see Janet Brown's name, correct?

10 A. Yes.

11 Q. You see Ed Jacob's name, correct?

12 A. Yes.

13 Q. And Mr. Pepples' name, correct?

14 A. Yes.

15 Q. You see Preston Leake's name, correct?

16 A. Yes.

17 Q. Now, sir, do you recall attending a CTR
18 meeting in New York City on November 22, 1977,
19 where these members were also present?

20 A. No. I do not.

21 Q. If you go down to the first line, the

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1 note, you don't recognize the handwriting of this
2 document, correct, sir?

3 A. No. I don't.

4 Q. You see Dr. Gardner says: Intro
5 Dr. Donald Ford, new staff member, CTR.

6 Okay. He was an endocrinologist. Do
7 you remember that, sir?

8 A. Well, I know he was. I know he was a
9 faculty member in, I believe, Downstate Medical
10 in Brooklyn.

11 Q. The next two lines read: New CNS
12 studies, what should CTR get into? Now, you
13 understand what CNS stands for?

14 A. Yes.

15 Q. Tell the jury.

16 A. Central nervous system.

17 Q. You skip down two lines, you see it
18 says: "Opiates and nicotine may be similar in
19 action."

20 You see that quote?

21 A. Yes.

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1 Q. Do you recall a meeting where
2 Dr. Donald Ford discussed new central nervous
3 system studies and made a statement to the effect
4 that opiates and nicotine may be similar in
5 action?

6 A. No. I do not.

7 MR. KLUGMAN: Objection to the form.

8 A. No. I do not.

9 Q. If you would sip down further: "We
10 accept the fact that nicotine is habituating".

11 Do you recall attending a meeting where
12 Dr. Ford stated words to the effect that we
13 accept the fact that nicotine is habituating?

14 MR. KLUGMAN: Objection to the form.

15 A. No. I do not.

16 Q. I would like you to take, if you can
17 turn to the second page, you see that Leo Abood
18 is referenced?

19 A. Yes.

20 Q. Do you recall ever attending a
21 presentation where Dr. Abood talked about central

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1 nervous system research?

2 A. No. I do not.

3 Q. Do you know what the initials AHH stand
4 for?

5 A. Alpha hydroxylene hydrocarbon, I
6 believe that's it. I'm not sure.

7 Q. And what is the substance whose
8 initials AHH are?

9 MR. KLUGMAN: Objection to the form.

10 Q. Let me withdraw it. You understood
11 that was an enzyme found in humans, correct?

12 MR. KLUGMAN: Objection to form.

13 A. I don't remember.

14 Q. Do you recall in the time frame 1977 to
15 1978, there was a scientific hypothesis that you
16 could measure AHH levels, and the hypothesis was
17 that this may lead to a determination of the
18 susceptibility to cancer?

19 Do you remember that, sir?

20 A. Vaguely.

21 Q. Do you remember that Dr. Kreisher was

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1 interested in AHH research?

2 A. I never knew that.

3 Q. If you could turn to the page that has
4 588 as the last three numbers, the Bates
5 numbers. Perhaps I could help you.

6 MR. KLUGMAN: Down at the bottom.
7 That's all right. He can find it. 588, right?

8 MR. HOSKINS: Yes.

9 Q. Yeah, and at the top of that, sir, you
10 see: Does a lung cancer patient have higher
11 AHH?

12 Sir, does that refresh your
13 recollection?

14 A. About AHH, yes.

15 Q. All right, sir.

16 A. I thought I recalled it in connection
17 with emphysema, but I'm not sure. As an enzyme
18 it could be involved, according to some people,
19 in tissue destruction leading to, in turn,
20 emphysema.

21 Q. And, sir, what involvement, if any, did

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1 you have in the SAB budgeting process?

2 MR. KLUGMAN: Objection to the form.

3 You mean the one that sets the budget?

4 Q. Yes, sir. The budgeting process, how
5 much money they are going to have.

6 A. None at all.

7 Q. Did you attend SAB meetings?

8 A. Not everyone, but a number of them,
9 yes.

10 Q. You agree with me that CTR staff
11 members were allowed to attend SAB meetings,
12 correct?

13 A. Yes.

14 Q. In fact, CTR staff members very often
15 played a role in the SAB meetings, correct?

16 A. Yes.

17 Q. You also understood that when the CTR
18 did contract research, an Associate Scientific
19 Director was assigned to monitor a specific
20 contract, correct, sir?

21 MR. KLUGMAN: Objection the form.

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1 A. I don't recall that specifically
2 really, but I won't even assume that. I'm sure
3 it did happen that way. -

4 Q. Do you recall which Assistant
5 Scientific Director interacted with MAI?

6 MR. KLUGMAN: Objection to the form.

7 A. I believe it was Kreisher, but I can't
8 be sure, so I won't say.

9 Q. Do you recall which Assistant
10 Scientific Director interacted with Dr. Abood?

11 MR. KLUGMAN: Objection to form.

12 A. No. No. I do not.

13 Q. Would Donald Ford refresh your
14 recollection?

15 A. No. It does not. I just don't know.

16 Q. Now, sir, directing your attention to
17 November of 1977, the first page of this
18 document.

19 Does this document and, specifically,
20 the first seven lines, refresh your recollection
21 about what type of meeting this would have been

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1 that is set forth here?

2 MR. KLUGMAN: I'm not sure what you
3 mean by the first seven lines. Is there
4 something you want him to look at in particular?

5 MR. HOSKINS: Yeah, let me just point
6 if it's all right with you.

7 Q. Just the list of attendees, the
8 location and the date.

9 A. Mr. Hoskins, I'm sure I was at this
10 meeting, only because I'm looking at this copy
11 and seeing my name there. But I do not remember
12 the meeting at all.

13 I do remember at one meeting after the
14 meeting, I had lunch with John Campbell, and I
15 remember the lunch because we ate at a Chinese
16 restaurant. It wasn't really Chinese. It was a
17 Far Eastern type of restaurant almost across the
18 street from the building where CTR was on East
19 59th Street. That's about all I remember.

20 And whether it was in relation or after
21 this meeting, I just don't know. I cannot

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1 recall.

2 Q. The attendees at this meeting, did
3 those attendees make up the Industry Technical
4 Committee in 1977, as you understood it?

5 MR. KLUGMAN: Objection to the form.

6 A. I have no idea. I did know at one time
7 who was on the Technical Committee, but all I
8 remember about any relationship I had with them
9 was seeing a committee member at SAB meetings not
10 every time.

11 Q. Okay. And you understood that the
12 committee member who attended the SAB meetings
13 was the chairman of the Industry Technical
14 Committee. Was that your understanding, sir?

15 MR. KLUGMAN: Objection to the form.

16 A. I really don't remember.

17 Q. Now, sir, directing your attention to
18 the central nervous system research.

19 Did you ever come to learn that the
20 member companies were concerned about CNS
21 research that was being proposed in 1977 and

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1 1978?

2 A. I just don't know that I ever knew
3 about that, about the concern as you express it.

4 Q. Now, talking about Microbiological,
5 MAI, you testified that you knew what
6 methylcholanthrene was.

7 When was it you first heard about
8 methylcholanthrene?

9 A. Oh, I have no idea.

10 Q. Do you recall any time in 1977 and 1978
11 that the member companies of CTR expressed
12 concern that MAI was experimenting with
13 methylcholanthrene?

14 A. I have no idea of that.

15 Q. Now, sir, did you know Dr. Seligman?

16 A. The name is familiar, but I do not
17 recall who he was.

18 Q. I'll show you what's -- let me show you
19 what we're going to mark as Exhibit 20207 to the
20 deposition. Sir, I would like you to read
21 through the document.

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1 MR. KLUGMAN: Before he does that, Let
2 me just ask the same question I asked about the
3 last one.

4 MR. HOSKINS: This is not a formerly
5 privileged document. I think it was used in
6 Minnesota. This is not a formerly privileged
7 document.

8 MR. KLUGMAN: The fact that it was used
9 in Minnesota didn't indicate one way or the
10 other.

11 MR. HOSKINS: I'm not totally certain
12 whether or not this is a formerly privileged
13 document.

14 MR. KLUGMAN: Well, I've got a list
15 which I am told is not reliable, but it is a
16 list, so I will consult it.

17 I don't know, Mr. Hoskins, we have some
18 understanding that this is not privileged and has
19 not been claimed to be privileged but we are not
20 certain.

21 MR. HOSKINS: I just remember it was

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1 used in Minnesota, but then you refresh my
2 recollection that some formerly privileged
3 documents were used in Minnesota, but I don't
4 believe it is, given who it was to and who it was
5 from.

6 MR. KLUGMAN: Let me just say if it was
7 used in Minnesota, depending upon how and when it
8 was used, that might provide the answer, but if
9 all you know is it was an exhibit --

10 MR. HOSKINS: You can treat it, you want
11 to treat it as a privileged document?

12 MR. KLUGMAN: Yeah, then we have to
13 raise the issue that we talked about before,
14 which is how this is going to be dealt with in
15 terms of the Ohio Iron Workers case.

16 MR. HOSKINS: Can I suggest we go off
17 the record and you guys talk about it and we'll
18 go back on the record.

19 VIDEO OPERATOR: Going off the record
20 the time is 11:19.

21 (Discussion off the record.)

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1 VIDEO OPERATOR: Back on the record.

2 The time is 11:22.

3 MR. KLUGMAN: We have been talking
4 about Plaintiff's Exhibit 20207. I don't believe
5 this is a document to which a privilege has been
6 asserted, but it may be. We'll have to review
7 that, review it after the deposition. I don't
8 want to take the time now.

9 But we've had a discussion off the
10 record, and my understanding is that in the event
11 that Mr. Zahn is shown privileged documents,
12 those documents are marked as exhibits at those
13 depositions, in any event that Mr. Zahn gives
14 testimony about those documents, that those
15 exhibits and that testimony will not be a part of
16 the record in the Ohio Iron Workers case at this
17 time.

18 At a later time, some steps may be
19 taken either by agreement or by orders of one or
20 both the courts involved here to make it a part
21 of the record in that case, but right now we are

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1 including everything in the record of the
2 Maryland case. We will have to see what can
3 remain in the record of the Ohio Iron Workers
4 case.

5 And further I understand, and I hope
6 you will confirm, Mr. Kristal, that you are
7 remaining here for the discussion of this
8 document and will remain for the discussion of
9 other documents that, as to which there may be a
10 claim of privilege, in your capacity as
11 co-counsel or assisting in some measure the
12 efforts of the Angelos firm in the Richardson
13 case.

14 MR. KRISTAL: That's correct.

15 MR. KLUGMAN: And you will not assert
16 that permitting you to remain here and see those
17 documents and hear testimony about those
18 documents constitutes some kind of waiver in the
19 Ohio Iron Workers case, because they are not part
20 of the record in that case, and with the kind of
21 logic that lawyers can use, you are not here for

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1 those purposes at that time.

2 MR. KRISTAL: That's correct. We will
3 not assert a waiver because I'm sitting here
4 assisting the Angelos firm.

5 Q. You had a chance to review that
6 document, sir?

7 A. Yes.

8 Q. I take it you have never seen that
9 document before today, is that correct, sir?

10 A. I don't remember it.

11 Q. It makes reference to a CTR meeting
12 that occurred on October 18, 19 and 20, 1978.

13 Does that refresh your recollection
14 that that was a meeting of the SAB to discuss
15 grant approval?

16 A. It could well have been. I would guess
17 the three days, sometimes it runs four, the time
18 of the year, yes, it could well have been the
19 fall meeting of the SAB.

20 Q. Okay. And the first sentence reads: I
21 discussed the recent CTR meeting with Preston

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1 Leake as chairman of the Industry Technical
2 Committee. He was present at the grant approval
3 meeting of CTR.

4 Now, do you remember which company
5 Preston Leake worked for?

6 A. He worked for American Tobacco Company.

7 Q. And do you understand that the exhibit
8 that is marked 20207 is on Philip Morris
9 interoffice correspondence letterhead, correct,
10 sir?

11 A. So it says.

12 Q. Next sentence: As a matter of
13 background, Preston indicated that at the mid
14 1978 meeting, Ed Jacob appeared to warn the SAB
15 against approving work in the area of CNS
16 stimulation.

17 Do you see that, sir?

18 A. Yes.

19 Q. And were you in attendance at the mid
20 1978 meeting of the CTR, Scientific Advisory
21 Board, where Ed Jacob appeared to warn the SAB

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1 against approving work in the area of CNS
2 stimulation?

3 MR. KLUGMAN: Objection to form.

4 A. I don't know whether I was or not. I
5 cannot remember.

6 Q. Do you recall, sir, at any time Ed --
7 well, let's back up a second.

8 Ed Jacob you recall worked for the law
9 firm of Jacob and Medinger, correct?

10 A. Yes.

11 Q. Ed Jacob you recall served as outside
12 general counsel for the Council for Tobacco
13 Research, correct?

14 MR. KLUGMAN: Objection to form.

15 A. Yes.

16 Q. Do you recall any meeting you attended
17 where Ed Jacob warned against approving work in
18 the area of CNS stimulation?

19 A. I can recall only one meeting of the
20 Scientific Advisory Board that Ed Jacob
21 attended. I don't remember when. I know it was

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1 a meeting at which the SAB was reviewing grant
2 applications.

3 Q. And what do you --

4 MR. KLUGMAN: Excuse me. He wasn't
5 finished, Mr. Hoskins.

6 MR. HOSKINS: I'm sorry, I apologize.

7 A. All I remember about Jacob's presence
8 at that meeting was that he spoke to the Advisory
9 Board, and warned them or advised them about
10 grants that had commercial application.

11

12

13

14

15

16

17 And that is the only meeting that I can
18 recall that Ed Jacob attended of the Advisory
19 Board. I don't recall any other meeting.

20 Q. Now --

21 A. Yeah, this refers to a mid-1978

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1 meeting, that would be the summertime, May, June,
2 July would be the middle of the year. I don't
3 recall any SAB meetings at this time at all, or
4 CTR meetings. There could have been.

5 Q. And do you recall that, well, let me
6 back up a second.

7 What did you understand Mr. Jacob meant
8 by commercial implication?

9 MR. KLUGMAN: Objection to the form.

10 A. Just what he said. Somebody wanted
11 money to, perhaps, device a way to treat tobacco
12 differently, to make a different kind of
13 cigarette, to make a filter or anything that he
14 or she could make money out of.

15 That was my, I believe, that's what I
16 would have thought at the time, anything
17 commercial for somebody making a profit or trying
18 to.

19 Q. Did you understand a commercial
20 implication could mean anything also that could
21 cause a company to lose money?

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1 MR. KLUGMAN: Objection to form.

2 A. I have no idea what I really thought at
3 the time. I mean commercial to me right now
4 today is, well, no, you would want to make money,
5 but you could lose money on it, too, because it
6 might not be a successful product.

7 Q. And what do you recall, who else do you
8 recall being present at that meeting, where
9 Mr. Jacob made this presentation?

10 MR. KLUGMAN: Objection to the form.

11 A. The Scientific Advisory Board. There
12 may have been an ITC member there. I don't know.
13 I don't remember.

14 Q. How about members of the staff at CTR?

15 A. Oh, yes. They, whatever staff was in
16 town, always attended SAB meetings, as far as I
17 can recall.

18 Q. What do you recall the reaction of the
19 SAB members to be to Mr. Jacob's presentation?

20 MR. KLUGMAN: Objection to form.

21 A. I don't recall any reaction really at

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1 that particular meeting, the one that I remember.

2 Q. Do you recall the SAB members reacting
3 vehemently to the presentation?

4 A. No. As I said, I don't recall or
5 remember any sort of reaction, I mean anything
6 that would have emphasized my recollection.

7 I mean something outstanding, not the
8 sense where a member pulled out a gun and shot at
9 him, but where somebody would have objected
10 strongly or anything unusual to what was a
11 normally calm, regular procedure.

12 Q. What was the specific research that Ed
13 Jacob identified raised a commercial
14 implication?

15 MR. KLUGMAN: Objection to the form.

16 A. I have no idea. I can't recall that.

17 Q. Do you recall that it was the CNS
18 research of Dr. Abood?

19 A. I have no idea. I just don't remember.

20 Q. You know what nicotine is, correct,
21 sir?

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1 A. Yes.

2 Q. Where is nicotine found in nature, do
3 you know?

4 A. It is found in tobacco. It is found in
5 certain plant life, I believe, tomatoes I think
6 may have some nicotine, potatoes.

7 Q. Ever heard of the scientific term
8 "analog"?

9 A. Yes.

10 Q. What is an analog?

11 A. I believe it is a compound that is
12 similar to something else.

13 Q. It is a substitute, correct, sir?

14 A. Yeah, in effect.

15 Q. Ever hear of nicotine analogs?

16 A. I'm not sure.

17 Q. Now, you understand that the nicotine
18 in cigarettes comes from the tobacco, correct,
19 sir?

20 A. I believe so.

21 Q. Doesn't come from the filter, correct?

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1 A. I agree, yes.

2 Q. Doesn't come from the cigarette rolling
3 paper, correct?

4 A. No.

5 Q. Doesn't come from any additives that
6 may or may not be in there, correct?

7 MR. KLUGMAN: Objection to the form.

8 A. I don't believe so.

9 Q. You understand, sir, that if there was
10 a nicotine substitute that didn't -- strike that.

11 You understood, sir, that the
12 possibility existed that there could be a
13 nicotine analog that came from something other
14 than tobacco, correct, sir?

15 MR. KLUGMAN: Objection to the form.

16 A. I guess the possibility does exist.

17 MR. KLUGMAN: Mr. Zahn, the question is
18 whether you understood that. Please try to
19 answer the question.

20 Q. Well, you are a scientific writer, sir,
21 you understood that an analog was a substitute,

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1 correct?

2 A. Well, as a science writer, I don't know
3 how scientific I was, but I was a science writer,
4 I do not claim, I did not claim that I knew
5 everything or even knew an awful lot.

6 But I tried to be as accurate as I
7 could whenever I did write a story for
8 publication.

9 Now, would you repeat your question?

10 Q. You understood, sir, that the
11 possibility existed in science that there could
12 be an analog for nicotine that doesn't require
13 tobacco?

14 MR. KLUGMAN: Objection to form.

15 A. Yeah, I believe so.

16 Q. And you would agree with me, sir, that
17 if a nicotine analog could be developed that
18 didn't require tobacco, there was a potential
19 commercial implication, in that you could produce
20 nicotine without burning tobacco?

21 MR. KLUGMAN: Objection. Mr. Hoskins.

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1 are you asking him what he understands today or
2 what he understood at some time in the past?

3 MR. HOSKINS: What do you understand
4 today, sir?

5 MR. KLUGMAN: Objection to the form.

6 A. Well, how sure can we be that an analog
7 is exactly like nicotine in the results that it
8 produces? I'm not sure that's possible. But it
9 could be.

10 Q. Now, sir, if a scientist discovered a
11 nicotine analog that didn't require tobacco, you
12 would agree with me that that could put the
13 tobacco companies out of business, correct?

14 MR. KLUGMAN: Objection to the form.
15 Are you asking for his perception today?

16 MR. HOSKINS: Yes, sir.

17 MR. KLUGMAN: Objection to the form.

18 A. Well, as I answered your previous
19 question, if it is not exactly like nicotine, and
20 if nicotine is why people smoke, I don't think it
21 would be all that successful in the long run or

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1 even in the short run.

2 Q. Why is that, sir?

3 A. Because it is not producing all the
4 results that people seem to want when they do
5 smoke.

6 Q. Now, sir, in 1977 and 1978, did you
7 understand that Dr. Abood was considering
8 research into nicotine analogs?

9 A. I cannot recall what he was proposing
10 or what he was doing at the time.

11 Q. Do you recall member companies
12 expressing concern about the development of a
13 nicotine analog?

14 MR. KLUGMAN: Objection to the form.

15 A. No. I don't recall. I just have no
16 knowledge of that.

17 Q. Do you recall member companies
18 expressing concern about a nicotine analog that
19 could put the cigarette manufacturers out of
20 business overnight?

21 MR. KLUGMAN: Objection to form.

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1 A. No. I do not.

2 Q. Did you ever hear of something -- do
3 you know what a blocker is, as a science writer?

4 A. I'm assuming that it is an agent that
5 does just what the name, the word says, it blocks
6 some effect.

7 Q. What is an antagonist, do you know what
8 it is, sir?

9 A. I would almost believe that it is the
10 same as a blocker, that would either stop an
11 effect or produce an opposite effect.

12 Q. Ever hear a term "a blocker of a
13 blocker"?

14 A. I don't recall that, no.

15 Q. Now, we talked earlier about Janet
16 Brown, correct, sir?

17 A. Yes.

18 Q. Did you have a -- strike that. Did you
19 have a social relationship with Janet Brown or
20 just a business relationship with Janet Brown?

21 A. Just a business relationship.

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1 Q. How is it that you came to ask Janet
2 Brown to help you draft your consulting
3 agreement?

4 MR. KLUGMAN: Objection to the form.
5 Misstates testimony.

6 A. You know, in recollection now, I don't
7 know that I would have or that I did.

8 What I may have done, when I left Hill
9 & Knowlton, I took with me a copy of the normal
10 contract that Hill & Knowlton used with its
11 clients, and I probably showed that to Janet and
12 asked her if this is sufficient or okay or
13 whatever.

14 And she may have suggested, I do not
15 recall the specific recommendation that she made,
16 but it probably was that -- I may have gone
17 directly to her. I just don't remember.

18 Q. Why was it you chose Janet Brown as
19 opposed to Mr. Jacob or Mr. Holtzman? Was there
20 any reason?

21 MR. KLUGMAN: Objection to form. Go

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1 ahead.

2 A. Well, I never had a, I never cared much
3 for Ed Jacob. We just didn't get along all too
4 well.

5 I never thought of going through Alex
6 Holtzman, whom I did like, I guess, because Janet
7 was CTR's counsel, and I knew her and I liked
8 her. I assumed she liked me, and if I did ask
9 her directly, then that would have been -- those
10 would have been the reasons.

11 Q. Do you recall ever having any
12 discussions with Janet Brown concerning central
13 nervous system research proposed by Dr. Abood?

14 A. No, not at all.

15 Q. Do you recall any discussions with
16 Janet Brown about any of the research being
17 performed by MAI?

18 A. No. I do not.

19 Q. Do you recall any discussions with Ed
20 Jacob about research concerning central nervous
21 system issues?

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1 A. No.

2 Q. Do you recall any discussions with Ed
3 Jacob about research conducted at MAI?

4 A. No. My only discussions with Jacob
5 about MAI was when I wrote --

6 MR. KLUGMAN: Hold on one second now to
7 make sure that this is not privileged
8 communication. Why don't you tell him --

9 MR. HOSKINS: I think he can tell the
10 background, and we can decide from there.

11 MR. KLUGMAN: Why don't you tell him
12 the circumstances under which you had the
13 conversation. Speak slowly. I may need to
14 interrupt you. Don't tell him what you said to
15 Mr. Jacob or what you said or why you were
16 talking to him.

17 A. After I drafted a press release on the
18 blue book you referred to before, I sent it to Ed
19 Jacob at Mr. Hoyt's request.

20 Q. And did there follow a conversation
21 with Ed Jacob concerning the content of the press

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1 release?

2 MR. KLUGMAN: Tell him yes or no.

3 A. Yes.

4 Q. Was the press release modified
5 subsequent to that conversation?

6 MR. KLUGMAN: Just tell him, you can
7 tell him yes or no.

8 A. Yes.

9 Q. Did you retain a copy of the earlier
10 draft of the press release?

11 A. I don't remember.

12 Q. Do you recall there being things known
13 as CTR information meetings?

14 A. I don't recall anything with that name
15 attached to it.

16 Q. Do you recall ever attending any
17 meetings where Dr. Kouri made a presentation of
18 the status of the inhalation studies at MAI?

19 A. You know, nobody ever asked me that
20 before. I never thought about it. I can't
21 remember. It is possible that Kouri came to an

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1 SAB meeting one time. It was not unusual for
2 scientists to come and talk to the SAB at their
3 regular meetings. I just don't remember
4 exactly. I can't. I don't remember it.

5 Q. We talked about methylcholanthrene
6 earlier.

7 A. Uh-huh.

8 Q. Do you recall at some point MAI
9 considered performing inhalation studies using
10 cigarettes that had methylcholanthrene added?

11 MR. KLUGMAN: Objection to form.

12 A. No. I don't remember at all.

13 Q. Did you understand at some point MAI
14 conducted inhalation studies on something called
15 whole smoke?

16 A. I believe they were doing that.

17 Q. And what was your understanding of what
18 whole smoke, w-h-o-l-e smoke, was?

19 A. Smoke drawn from a cigarette.

20 Q. And you call that mainstream smoke,
21 correct, sir?

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1 A. Yes.

2 Q. And do you recall how it was that the
3 mice inhaled the smoke in the MAI experiments?

4 MR. KLUGMAN: Objection to the form.

5 A. Not specifically. But it would have to
6 be some sort of a holder, in effect, that the
7 heads were fitted into, so that there would be no
8 leakage and that they would be getting the smoke
9 that was drawn in.

10 Q. Do you recall how Dr. Hammond and
11 Auerbach performed inhalation studies on their
12 beagles in 1970?

13 A. Well, it was Dr. Auerbach that did the
14 work. Dr. Hammond was a statistician, he was not
15 a laboratory scientist.

16 I believe Dr. Auerbach inserted
17 cigarettes into tracheostomies that were
18 performed on the dogs, and the smoke was pulled
19 in in that manner.

20 Q. Do you recall how Dr. Homberger
21 achieved smoke inhalation in his experimental

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1 animals?

2 MR. KLUGMAN: Objection to the form.

3 A. I believe it was through direct
4 inhalation. I don't recall any surgical
5 procedure being performed, although I could be
6 wrong.

7 Q. Now, are you familiar with the smoke
8 inhalation experiments that occurred at Bitel
9 Northwest?

10 A. Another name from the distant past. I
11 don't know what kind of work was done at Bitel.

12 Q. You remember that had dogs with face
13 masks on them?

14 A. No. I just don't remember.

15 Q. Now, do you have any recollection of
16 MAI proposing to do inhalation on a smoke
17 fraction, rather than whole smoke?

18 MR. KLUGMAN: Objection to form.

19 A. No. I do not.

20 Q. Do you recall that MAI at one point,
21 had mice interbred to be peculiarly susceptible

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1 to AHH changes?

2 MR. KLUGMAN: Objection to the form.

3 A. No. I don't.

4 Q. Do you recall MAI trying to inbreed a
5 unanimous to be peculiarly susceptible to cancer?

6 A. No. I don't remember.

7 (Discussion off the record.)

8 MR. HOSKINS: Sir, I'm going to hand you
9 what we're going to mark as Exhibit 11541.

10 MR. KLUGMAN: May I get a copy? There
11 are two pages?

12 MR. HOSKINS: They are attached. Same
13 document, same exhibit, two-page exhibit.

14 Q. Do you know who Clifford Goldsmith
15 was?

16 A. Yes.

17 Q. Who is Clifford Goldsmith?

18 A. Well, he was, I believe, president of
19 Philip Morris, or Philip Morris USA, I believe,
20 when I knew him.

21 Q. Now, the first line of the first page

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1 talks about November 22, 1977, Tom Osdene
2 represented Philip Morris at a CTR program review
3 session.

4 Do you see that term "program review
5 session"?

6 A. Yes.

7 Q. Does that refresh your recollection
8 that from time to time, CTR would hold program
9 review sessions?

10 MR. KLUGMAN: Objection to form.

11 A. I don't recall that type of name for a
12 session, for a meeting.

13 Q. And you would agree with me, sir, that
14 Exhibit 20336 also makes reference to a November
15 22, 1977 meeting, correct?

16 A. Yes.

17 Q. And that document, does that document
18 show Dr. Osdene being in attendance, sir? Can
19 you see his name there?

20 A. Well, I recall that you read it. I
21 don't see it here.

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1 Q. Does that refresh your recollection
2 that this document 20336 is in Thomas Osdene's
3 handwriting?

4 MR. KLUGMAN: Objection.

5 A. In whose?

6 Q. Dr. Osdene's handwriting.

7 MR. KLUGMAN: Come on, Mr. Hoskins,
8 objection.

9 A. I have no idea what Osdene's
10 handwriting looks like.

11 Q. Okay.

12 A. I don't know who wrote this thing.

13 Q. Okay. Turn to the next page. I was
14 amazed at the trend that the CTR work is taking.
15 For openers, Dr. Donald H. Ford, a new staff
16 member, makes the following quotes:

17 "Opiates and nicotine may be similar
18 in action."

19 "We accept the fact that nicotine is
20 habituating."

21 "There is a relationship between

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1 nicotine and the opiates."

2 Do you see those quotes?

3 A. Yes.

4 Q. Sir, does that refresh your
5 recollection that those statements were made by
6 Dr. Ford at the 1977 meeting of the CTR?

7 MR. KLUGMAN: Objection to form. No
8 foundation.

9 A. I believe I told you I don't recall
10 being at the meeting, although I have no doubt I
11 was. I just do not remember those quotes or
12 anything similar to it.

13 I don't even remember Don Ford
14 speaking. I don't remember the meeting at all.
15 Really, I just can't remember it.

16 Q. Next paragraph: Dr. Leo Abood whose
17 presentation showed a high degree of competence
18 has one of his aims a specific antagonist to
19 nicotine. This is done by various chemical
20 manipulations of nicotine and could well lead to
21 a clinically acceptable antagonist.

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1 Sir, does that refresh your
2 recollection about anything that occurred, any
3 meeting you attended where Dr. Aboud made similar
4 statements?

5 A. No. It does not.

6 Q. Next paragraph: Dr. Kreisher, now, he
7 was Associate Scientific Director, correct?

8 A. Yes.

9 Q. Dr. Kreisher's work in the area of AHH,
10 that's the enzyme we talked about before,
11 correct, sir?

12 A. Yes.

13 MR. KLUGMAN: It just says AHH, but you
14 are correct.

15 Q. From my point of view starts out with
16 the proposition that smoking causes lung cancer.
17 The rest of the work seems to justify this
18 approach. I am very surprised about the
19 extensive human clinical data which is now being
20 sought and feel that after four years of this
21 project, nobody has the slightest idea where it

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1 is going, where it is or what it is trying to
2 prove.

3 Sir, do you recall anyone ever
4 expressing those concerns to you about
5 Dr. Kreisher's work?

6 A. No.

7 Q. Last paragraph: It is my strong
8 feeling that with the progress that has been
9 claimed, we are in the process of digging our own
10 grave. I believe that the program as set up has
11 the potential of great damage to the industry,
12 and I strongly urge that the whole relationship
13 of our company to CTR be carefully reviewed.

14 I am very much afraid that the
15 direction of the work being taken by CTR is
16 totally detrimental to our position and
17 undermines the public posture we have taken to
18 outsiders.

19 Do you see that, sir?

20 A. Yes.

21 Q. To your recollection, did any

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1 representative of a member company ever express
2 those concerns to you?

3 MR. KLUGMAN: I'm sorry. Was that any
4 member company? I didn't hear you.

5 MR. HOSKINS: Yes, sir.

6 MR. KLUGMAN: I'm sorry. I didn't hear
7 you. Go ahead, Mr. Zahn.

8 A. Not that I can recall. I can't even be
9 specific about names, but obviously I talked with
10 various people at various times in various places
11 through the years, nothing specific at all.

12 Sure there were comments about why
13 isn't CTR moving faster? Why don't you do work
14 or get some work done in this area or that area?
15 And things of a more or less general nature.

16 MR. HOSKINS: Let's stop there for
17 lunch.

18 VIDEO OPERATOR: Off the record, the
19 time is 11:50.

20 MR. KLUGMAN: Are we finished with the
21 document? I would like to finish with the

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1 document before we break for lunch. I would just
2 rather not quit in the middle of a document.

3 VIDEO OPERATOR: I have to end the
4 tape. We'll go off the record, it is 11:51.

5 (Discussion off the record.)

6 VIDEO OPERATOR: Going back on the
7 record. This is the beginning of the second
8 videotape, the time is 1:03.

9 Q. Good afternoon, sir.

10 A. Good afternoon.

11 Q. Did you have a nice lunch?

12 A. Yes. I did, thank you.

13 Q. We talked about Dr. Kreisher. Do you
14 recall the circumstances that led to the
15 departure of Dr. Kreisher from the Council for
16 Tobacco Research?

17 A. No, sir. I do not.

18 Q. Did you understand that he was fired or
19 he resigned?

20 A. From what I was told later, it was a
21 combination of both.

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1 Q. And who did you learn this from?

2 A. I'm not quite sure. It was one of the
3 staff people. I don't know. I don't remember
4 which one.

5 Q. And when you were told this, what did
6 you interpret the phrase "a combination of both"
7 to mean?

8 MR. KLUGMAN: Objection to form.

9 A. He was permitted to resign.

10 Q. And why was it that you considered that
11 to be a combination of both resigning and firing?

12 A. Well, my understanding was that if he
13 did not resign, he would be fired.

14 Q. And do you know or did you come to
15 learn after the fact why it was that Dr. Kreisher
16 was going to be asked to resign or would be
17 fired, if he chose not to resign?

18 A. I never did inquire that much, and I
19 never learned the facts that lay behind it.

20 Q. At any other time, when you were
21 consulting for CTR, do you recall any other

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1 circumstance where a staff member was fired?

2 MR. KLUGMAN: Objection to form.

3 A. Not that I am aware of.

4 Q. Do you recall any circumstance where a
5 staff member was given the alternative of
6 resigning or if a staff member chose not to
7 resign, would be fired?

8 MR. KLUGMAN: Objection to form.

9 A. No. I do not.

10 Q. So, to your knowledge, sir, this is the
11 only circumstance from 196 -- strike that -- 1955
12 through 1993 when you recall a staff member being
13 told that they had the option to either resign or
14 be fired, is that correct?

15 MR. KLUGMAN: Objection to the form
16 insofar as it implies he has knowledge of this
17 circumstance.

18 A. It is the only such situation of which
19 that I can recall.

20 Q. What was the reaction, if any, of the
21 other staff members upon learning that

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1 Dr. Kreisher was going to have to leave the CTR?

2 A. I have no idea.

3 Q. Do you recall discussing Dr. Kreisher's
4 departure? Strike that.

5 Do you recall the name of anyone you
6 discussed Dr. Kreisher's departure with?

7 A. No.

8 Q. Was your wife performing services for
9 CTR at the time of Dr. Kreisher's departure?

10 A. I'm not even sure when he did leave.
11 But, no, she would have had nothing to say or to
12 do in regard to that.

13 Q. Was Dr. Kreisher married, do you
14 recall?

15 A. Yes.

16 Q. Were there occasions when you and your
17 wife would be present at meetings where
18 Dr. Kreisher and his wife were present?

19 A. I remember meeting his wife. I don't
20 know whether she had come to the office or she
21 had gone with him to one of the SAB meetings,

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1 particularly the winter meeting or had come into
2 a regular meeting when there was an evening
3 dinner for the group. I don't remember. I may
4 have met her twice at something like that. I
5 just can't remember.

6 Q. Do you have any knowledge from any
7 source of the reasons that led up to Dr. Kreisher
8 being asked to resign or face firing?

9 MR. KLUGMAN: Objection to the form.

10 A. Not really. Not really, as I said
11 before, I did not inquire at any length. It was
12 really none of my business.

13 Q. Sir, I'm going to hand you what we're
14 marking as Exhibit 11927 to the deposition. I'm
15 sorry, let's not do that one yet. Let's do
16 15157.

17 Sir, I'm going to hand you what we're
18 marking as Exhibit 15157 to the deposition. This
19 is a letter on American Brands, Inc., letterhead
20 dated December 6, 1977, addressed to Addison
21 Yeaman from Robert K. Heimann, the chairman and

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1 chief executive officer of American Brands.

2 Do you see that document, sir?

3 A. Yes.

4 Q. Do you recall that in 1977,

5 Mr. Heimann, as chairman and chief executive

6 officer of American Brands, was one of the

7 members of the CTR board of directors?

8 A. No. I don't remember that specific
9 assignment for him.

10 Q. Okay. If you could turn to the third
11 page, sir, of the document. You see references
12 to Mr. Lougee in the carbon copy column?

13 A. Yes.

14 Q. Did you know Mr. Lougee?

15 A. I did, but I can't connect him with a
16 company. I recall the name as I see it here. I
17 think I can almost see his face, because I can't
18 remember. I would be guessing. I don't want to
19 do that.

20 Q. You knew Ms. Brown, Janet Brown?

21 A. Yes.

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1 Q. You knew Mr. Stinnette?

2 A. Yes. Again, that name is familiar as I
3 see it here, I don't know with what company he
4 was affiliated.

5 Q. You knew Joseph Cullman, correct?

6 A. Yes.

7 Q. And Joseph Cullman held what position
8 in 1978?

9 A. Well, what year, I'm not sure, but he
10 was chief executive officer or president or
11 whatever of Philip Morris.

12 Q. You knew Joe Edens, correct?

13 A. Yes.

14 Q. Who was Joe Edens?

15 A. He was, I believe, at one time
16 president of Brown & Williamson.

17 Q. Would it refresh your recollection that
18 Mr. Lougee was the head of Research and
19 Development at American Tobacco?

20 MR. KLUGMAN: Objection.

21 A. I don't recall that at all.

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1 Q. You knew Clifford Goldsmith, correct?

2 A. Yes.

3 Q. Who was Clifford Goldsmith in 1977?

4 A. I don't know what the year was, but
5 when I knew him, he was president of Philip
6 Morris.

7 Q. You knew William Hobbs, correct?

8 A. Yes.

9 Q. Who was William Hobbs?

10 MR. KLUGMAN: Excuse me.

11 A. He was president of R.J. Reynolds and
12 later became chairman or president of CTR.

13 Q. You knew Curtis Judge, he was president
14 of Lorillard, correct?

15 A. Yes.

16 Q. Did he later hold an office at CTR as
17 well?

18 MR. KLUGMAN: Objection to form.

19 A. You mean as an officer of CTR?

20 Q. Yes, sir.

21 A. Gee, I don't remember that at all, if

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1 it indeed is true.

2 Q. How about Colin Stokes? Do you know
3 Colin Stokes?

4 A. I remember the name. I'm not sure.
5 Was he with Reynolds? I would be guessing. I
6 don't want to do that.

7 Q. Do you recall, sir, in December, 1977,
8 American Brands threatening to pull its funding
9 from the Council for Tobacco Research?

10 MR. KLUGMAN: Objection to the form.

11 A. Now that you mention it, I recall
12 something like that, but I don't remember the
13 details or exactly when that happened or even if
14 it happened in the terms you have described.

15 Q. What is your recollection, if any, with
16 respect to the issue of American Tobacco's
17 concerns with funding CTR?

18 A. Only that American was going to
19 withdraw from CTR.

20 Q. Who did you learn that American was
21 going to withdraw from CTR from?

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1 A. I can't even remember that. I'm just
2 vaguely remembering that something like that did
3 happen, did go on.

4 Q. Do you have any present recollection of
5 what it was that was going to lead American
6 Tobacco to make this decision to withdraw?

7 A. No. No. I do not.

8 Q. Fair to say, sir, have you ever seen
9 Exhibit 15157 prior to today?

10 A. Don't believe so. I don't remember it.

11 Q. Let me show you what we're going to
12 mark as Exhibit 11927. That is a December 9,
13 1977 letter on Council for Tobacco Research
14 letterhead addressed to Robert K. Heimann,
15 chairman, chief executive officer, American
16 Brands.

17 Do you see that document, sir?

18 A. I see it. I'm trying to read it.

19 MR. KLUGMAN: It does exist in a larger
20 type size, I know that.

21 Q. If you turn to page two, it is signed

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1 by Addison Yeaman, do you see this, sir?

2 A. Yes, I see that.

3 Q. Did you draft that letter, sir?

4 A. Oh, no.

5 Q. As part of your responsibilities did
6 you ever draft letters for signature by
7 Mr. Yeaman?

8 A. I can't ever remember having done so or
9 being asked to do so.

10 Q. Do you have any knowledge who would
11 generally draft letters for Mr. Yeaman, if
12 anyone?

13 MR. KLUGMAN: Other than maybe
14 Mr. Yeaman?

15 MR. HOSKINS: That's right.

16 A. Not at all.

17 Q. Do you recall in December of 1977,
18 Mr. Yeaman was actually living in Louisville,
19 correct?

20 A. I believe so, yes.

21 Q. Sir, had you seen this letter prior to

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1 today?

2 A. I don't remember it, not at all.

3 Q. Sir, I'm going to hand you what we'll
4 mark as Exhibit 11905 to the deposition.

5 Sir, this makes reference to notes of a
6 meeting of counsel, January 4, 1978, at offices
7 of Philip Morris, New York City.

8 Do you recall in 1978 where the offices
9 of Philip Morris were located in New York City?

10 A. They were on Park Avenue, a block or
11 two from 42nd Street, on the east side, East 42nd
12 Street.

13 MR. KLUGMAN: Let me ask you,
14 Mr. Hoskins, is this a document --

15 MR. HOSKINS: This is a Bleily
16 document.

17 MR. KLUGMAN: This is a document as to
18 which there has been a claim of privilege. Okay.
19 Do we all understand, Mr. Kristal?

20 MR. KRISTAL: Kristal, Jerry is good.

21 MR. KLUGMAN: Jerry, so we are all

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1 clear, questions about this document this
2 document itself will not be part of the record in
3 Ohio Iron Workers unless there is some order or
4 agreement --

5 MR. HOSKINS: Until the issue is
6 resolved, I think is what you are saying, right?

7 MR. KLUGMAN: Pending that, at this
8 point, it is not part of the record; and if it
9 can be made part of the record, fine.

10 MR. KRISTAL: The procedure as I
11 understood it is that the Maryland court or the
12 Washington D.C. court would then make a decision
13 to send a complete transcript so we could
14 obviously have argument before the judge in Ohio,
15 in other words, if the transcript in Ohio never
16 had this in it, we wouldn't be able to have
17 rulings.

18 MR. KLUGMAN: If you were here as
19 plaintiff's lawyer in that case, I would ask you
20 to leave, and I understand you wish to stay and
21 Mr. Hoskins wishes you to stay because you are

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1 working on the Richardson deposition.

2 MR. HOSKINS: Yes. We should just make
3 it clear that when we are talking about Maryland,
4 we should actually talking Richardson.

5 MR. KLUGMAN: I tried to say
6 Richardson, but I'm sure I got it wrong.

7 MR. HOSKINS: Anybody else want to say
8 anything before I start on this?

9 MS. WOODWARD: She just to make the
10 record clear for the Richardson and Reid cases,
11 the defendants generally for CTR object to the
12 use of the Bleily documents in the course of
13 these depositions and in particular any
14 questioning of the witnesses about the
15 documents.

16 In order to comply with the judge's
17 order which is in effect in these cases, we would
18 allow the witness to be questioned about the
19 document to the extent it doesn't move into
20 testimony that would be protected by privileges,
21 attorney-client or attorney work product and

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1 potentially to joint defense.

2 With that objection on the record, you
3 can probably proceed with the questioning, if
4 Mr. Klugman will allow it.

5 MR. KLUGMAN: You now make me wonder if
6 I understand. As I understand, the questioning
7 on this is governed by the stipulation in
8 Richardson.

9 MR. HOSKINS: And the order.

10 MR. KLUGMAN: As signed by Judge
11 Angeletti on August 5, 1998.

12 MR. HOSKINS: And various orders with
13 respect to privilege.

14 Q. Did you ever attend, sir, while you
15 were in your role as a consultant meetings of the
16 Committee of Counsel that occurred at Philip
17 Morris' offices?

18 A. I don't ever recall having done so.

19 Q. Do you ever recall attending meetings
20 of counsel that occurred at the American Brands
21 office in New York City?

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1 MR. KLUGMAN: Please wait until he
2 finishes, Mr. Zahn.

3 A. No.

4 Q. You knew Mr. Pepples from Brown &
5 Williamson?

6 A. Yes.

7 Q. Did you know Mr. London or Mr. Caplan
8 from the Paul, Weiss law firm?

9 A. No.

10 Q. You knew Mr. Temko from Covington &
11 Burling?

12 A. Yes.

13 Q. You new Mr. Austin from Covington &
14 Burling?

15 A. Yes.

16 Q. Did you know Mr. Henson at Chadborne?

17 A. I don't remember him or her.

18 Q. How about Hetsko, did you know Hetsko?

19 A. Yes.

20 Q. Cy Hetsko?

21 A. Yes.

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1 Q. General counsel, American Tobacco?

2 A. Yes.

3 Q. You know Janet Brown and Chadborne &
4 Park?

5 A. Yes.

6 Q. Did you know Scher or Jaffe?

7 A. No.

8 Q. How about, you knew Stevens?

9 A. Yes.

10 Q. PL, that is P. Lorillard, you
11 understood that, correct, sir?

12 MR. KLUGMAN: Objection to the form.

13 Q. At one point Lorillard was called
14 P. Lorillard Company, were you familiar with
15 that, sir?

16 A. I always, I knew there was a P. there,
17 but I always thought of it as Lorillard.

18 Q. Did you know Goldbrenner at Lorillard?

19 A. I don't remember him or her.

20 Q. You knew Shinn and Northrip at Shook,
21 Hardy & Bacon?

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1 A. Yes.

2 Q. Did you ever visit Shook, Hardy &
3 Bacon's office at Kansas City, Missouri?

4 A. Yes.

5 Q. Did you ever make a presentation at
6 Shook, Hardy & Bacon's offices in Kansas City,
7 Missouri?

8 A. I may have, but I just don't remember
9 having done so.

10 Q. What were the circumstances that led
11 you to visit Shook, Hardy & Bacon's offices in
12 Kansas City, Missouri?

13 A. I remember once, well, I think one time
14 for sure that I remember was when there was a
15 trial in Kansas City, and I went there to report
16 on it, the memo that I referred to earlier, that
17 type of memo.

18 But I became sick there. I actually
19 came down with the chicken pox, from one of my
20 children, and I had to leave.

21 And it may have been on that visit that

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1 I was there, but I know there was one other time
2 at least, if not more, that I was there. I don't
3 know if it was for a meeting of the
4 Communications Committee.

5 I can't believe that. I cannot
6 remember the reason. But I was there, if not
7 once, maybe at least once or twice, or perhaps
8 even more, but I just don't recall.

9 Q. You see the references to Mayer,
10 M-a-y-e-r, and Buck from Patton, Boggs. Do you
11 know who those people were?

12 A. No.

13 Q. Do you know who Joe Greer was at
14 Liggett, correct?

15 A. Yes.

16 Q. And did you know Max Crohn at Reynolds?

17 A. Yes.

18 Q. He was general counsel, you understood
19 that, correct?

20 MR. KLUGMAN: Objection to the form.

21 A. Yes.

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1 Q. You knew Mr. Jacob?

2 A. Yes.

3 Q. Mr. Holtzman?

4 A. Yes.

5 Q. Did you know Abe Krash at Arnold &
6 Porter?

7 A. I don't remember him.

8 Q. Did you know Dr. Gary Huber at
9 Harvard?

10 A. Yes.

11 Q. Dr. Gary Huber at Harvard did not
12 receive funding from the grand in aid program,
13 correct?

14 A. I'm not sure. I know he was involved
15 with a study at Harvard and Beth Israel. I think
16 he was, as I remember I can't remember. I'm
17 vague on it. I just can't recall that far back.

18 Q. Did you ever hear the term Special
19 Projects when you were at CTR?

20 A. Yes.

21 Q. What did you understand the term

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1 Special Projects to mean?

2 MR. KLUGMAN: Object to the form.

3 A. Just that it was something special in
4 terms of what it was supposed to do.

5 Q. When you used the term or when you
6 heard the term Special Projects, who did you
7 understand was making the decision as to whether
8 or not to fund that project?

9 MR. KLUGMAN: Objection to the form.

10 A. I have no idea. You mean what
11 individual or individuals?

12 Q. What group of individuals, sir?

13 A. No.

14 Q. Did you ever learn that there were
15 certain Special Projects that were performed at
16 the request of the lawyers?

17 A. No.

18 Q. Ever hear of special accounts?

19 A. No.

20 Q. Ever hear of Special Account Three?

21 A. Can't remember that at all.

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1 Q. How about Special Account Four?

2 A. No.

3 Q. How about Special Account Five?

4 A. No.

5 Q. Special Account Nine?

6 A. What happened to six, seven and eight?

7 Q. That was going to be my next question.

8 A. No.

9 Q. Did you ever hear of the Shook, Hardy &

10 Bacon account?

11 A. No.

12 Q. Did you ever hear of the central

13 account?

14 A. No.

15 Q. Did you ever hear of an account

16 maintained by Ed Jacob's law firm for research?

17 A. No.

18 Q. You remember when Ed Jacob worked for a

19 firm called Lauterstein & Lauterstein?

20 MR. KLUGMAN: I don't think you have

21 the name quite right.

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1 MR. HOSKINS: I'll get the name right.
2 Let me see if I can get that right.

3 MR. KLUGMAN: It looks like
4 Lauterstein. I'm not sure how you pronounce it.

5 Q. Lauterstein. Yeah. Every remember
6 that, sir?

7 A. No. I don't.

8 Q. If we could turn to page ten of the
9 document, sir, bottom of page ten. It says:

10

11

12

13

REDACTED

14

15

16

17

18

19

20

21

Sir, do you recall in early 1978
learning of Dr. Huber's intention to publish
interim results from his studies?

MR. KLUGMAN: Objection to the form

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1 A. No.

2 Q. Did you ever hear anyone suggest that
3 Dr. Huber was trying to blackmail the industry
4 into renovating his laboratory in order to keep
5 his project going by threatening to publish
6 interim results?

7 MR. KLUGMAN: Objection to form.

8 A. No.

9 Q. Have any firsthand knowledge about what
10 the interim results of Dr. Huber's research was
11 or were?

12 A. None, none at all.

13 Q. Have any information at all about what
14 type of research Dr. Huber was doing?

15 A. I can't even recall what his work
16 involved.

17 Q. If you could please turn, sir, to page
18 15.

19 You see the heading under Roman Numeral
20 IX "Approval Process on Special 4 Expenses"?

21 First sentence reads:

REDACTED

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REDACTED

Directing your attention to that sentence, does that refresh your recollection of any knowledge you might have had on a special account?

A. No, nothing.

Q. Were you ever interviewed and asked whether or not you had knowledge of special accounts?

MR. KLUGMAN: Objection to the form. Including, perhaps, a discussion with his lawyers or other lawyers?

Q. Well, let's start with people other than lawyers representing CTR.

A. You mean at a deposition or something like that.

Q. Or interview?

A. Who else would have interviewed me?

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1 No. No. I just don't.

2 Q. Ever interviewed by a reporter for the
3 Wall Street Journal?

4 A. Well, it all depends on what you say is
5 an interview or think is an interview.

6 Q. You were called by a reporter from the
7 Wall Street Journal, correct?

8 A. I recall having had lunch with a
9 reporter from the Wall Street Journal.

10 Q. What was the reporter's name?

11 A. She was a female, and I do not remember
12 her name.

13 Q. Would her name have been Alix
14 Freedman?

15 A. Yes. That sounds right.

16 Q. When did you have lunch with Alix
17 Freedman, do you remember?

18 A. Oh, gosh, I can't remember that.

19 Q. It was prior to February 11, 1993,
20 correct?

21 A. Oh, yes, I believe so.

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1 Q. Do you remember what happened on
2 February 11, 1993?

3 A. From your preceding questions, I would
4 guess, is this when the Wall Street Journal piece
5 came out?

6 Q. Yes, sir.

7 A. Okay.

8 Q. Do you remember, there were actually
9 two articles, correct, sir? Well, strike that.
10 Go ahead.

11 A. I'm not sure.

12 Q. You remember one was called smoke and
13 mirrors, how cigarette makers kept the health
14 question "open year after year." Council for
15 Tobacco Research is billed as independent but
16 guided by lawyers and industry insurance policy.

17 Do you remember that, sir?

18 A. I don't remember the specifics of it.
19 But I can guess that it would be along that line.

20 Q. And you had lunch with Alix Freedman?

21 A. Yes.

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1 Q. Who else was at that lunch?

2 A. I don't know if anyone else was, but
3 someone could have been there. I just don't
4 remember. And I think she paid for lunch, or
5 maybe we split it. I don't remember. I just
6 don't recall.

7 Q. What did you understand the purpose the
8 lunch to be?

9 A. She wanted information about CTR.

10 Q. She asked you questions about CTR?

11 A. Yes.

12 Q. Did you provide her answers to those
13 questions?

14 A. Best I could.

15 Q. What information do you recall
16 furnishing to Alix Freedman?

17 A. If I could answer her questions
18 specifically, I would be glad to answer, but I
19 tried to respond to every question she posed

20 Q. Who is Seriken, do you remember?

21 A. Seriken. He was a judge in a tobacco

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1 lawsuit, if I remember correctly.

2 Q. And do you recall whether or not
3 Seriken -- strike that.

4 What relationship, if any, did Seriken
5 have to this luncheon with Alix Freedman? Do you
6 remember?

7 A. I have no idea.

8 Q. Do you remember that Judge Seriken
9 issued an order in a case called Haynes that
10 talked about certain documents dealing with CTR?

11 A. I don't remember that.

12 Q. Do you recall that these documents
13 talked about lawyer control of research?

14 MR. KLUGMAN: Objection to form.

15 A. Anything I might have seen on that,
16 would have been in the newspapers, and I'm sure
17 if it was in the Times, I would have read it.

18 Q. Who was Pellegi?

19 A. I have no idea.

20 Q. Who was Caproni?

21 A. Caponi?

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1 Q. Caproni.

2 A. I have no idea.

3 Q. Who was Vallenti?

4 A. I don't know.

5 Q. Were you ever interviewed by an
6 Assistant United States Attorney for the Eastern
7 District of New York?

8 A. Yes.

9 Q. What was the name of the Assistant U.S.
10 Attorney who met with you?

11 A. I believe it was Ms. Liang. I'm not
12 sure of that.

13 Q. Do you remember how to spell it?

14 A. L-i-a-n-g.

15 Q. And when was it that that meeting
16 occurred?

17 A. Was it about four years ago or three?
18 I'm not sure of the time.

19 Q. Do you recall whether it occurred
20 before or after the Wall Street Journal articles?

21 A. Oh, I believe it was after.

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1 Q. Several months after the Wall Street
2 Journal article?

3 A. Well, that I didn't know.

4 Q. Do you recall it was in the spring of
5 1993?

6 A. I'm not sure of the time.

7 Q. What were the circumstances that led to
8 this interview by attorney Liang?

9 A. I was subpoenaed.

10 Q. And did you appear before a grand
11 jury?

12 A. No.

13 Q. Were you subpoenaed at your home?

14 A. I would guess I was, yeah, I'm not
15 sure, but I guess so.

16 Q. And you were interviewed, rather than
17 appearing before a grand jury; is that correct?

18 A. I was interviewed on the possibility
19 that she would call me before a grand jury, the
20 Assistant U.S. Attorney.

21 Q. And when you were interviewed, you were

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1 told you were not the target of a criminal
2 investigation; is that correct?

3 A. I can't recall that, but I believe
4 that's so. Well, I'm not sure. I just don't
5 remember.

6 Q. You never received a formal written
7 letter from the United States Attorney for
8 Brooklyn saying in writing that you were a target
9 of a criminal investigation, correct?

10 A. I don't ever remember that, no.

11 Q. I suspect you would have remembered it,
12 if you had received it?

13 A. I would think so.

14 Q. When you received the subpoena, you
15 called CTR, correct?

16 A. Yes.

17 Q. Who did you talk to at CTR?

18 A. I don't know, I may have talked to
19 Lorraine, I don't know, did I talk to Dr. Glenn?
20 I don't even know if Bob Gertinbach was still
21 there. I don't remember with whom I talked.

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1 Q. When you were interviewed by attorney
2 Liang, what did she ask you?

3 A. Well, many of the same type of
4 questions you have been asking me, and I answered
5 her as I am answering you, as best as I could
6 recall. But I don't remember specific questions.

7 Q. Was --

8 A. Well, she wanted to know what role I
9 had played in a number of things, a number of
10 situations.

11 And I do remember I got the idea that
12 she thought or was trying to, I won't say accuse,
13 but she apparently believed that I was some
14 potent mastermind who had put my magic fingers on
15 a number of these situations for the industry and
16 made things happen with all sorts of agencies and
17 people and that I was just a tremendous influence
18 on the industry.

19 And I remember responding very
20 forcefully to her in that regard, that if she did
21 believe that, it was wrong. And when I left I

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1 had the feeling that she believed me.

2 Because after this was, after I had
3 finished, she told me I was not going to appear
4 before the grand jury, and I believe she went out
5 and dismissed the grand jury, which had been
6 waiting the outcome of my interview.

7 Q. One of the things she talked about was
8 a memo you wrote concerning Freddy Homberger and
9 a press conference, correct?

10 A. Yes. I believe so.

11 Q. That issue surfaced during a lawsuit
12 known as Cippolone, correct?

13 A. I think that was the trial.

14 Q. You were deposed in Cippolone,
15 correct?

16 A. Yes.

17 Q. You were also deposed last year by
18 Susan Nyal in the Massachusetts Attorney
19 General's case, is that correct?

20 A. Yes.

21 Q. You weren't deposed any other times, or

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1 were you, other than those two cases and this
2 your third case?

3 A. I should be able to remember things of
4 this kind. I don't remember, but I think that's
5 so.

6 Q. What other current or former employees
7 from CTR did you learn had been subpoenaed by the
8 U.S. Attorney's Office?

9 MR. KLUGMAN: I'm going to object,
10 Mr. Zahn. If you have knowledge of that, if you
11 have any knowledge of that, let me know
12 privately, and we'll determine whether it is
13 subject to any privilege.

14 Q. Let me develop the record and make it a
15 little easier. Do you or did you come to learn
16 that other current and former employees of the
17 CTR had been subpoenaed by the grand jury, yes or
18 no?

19 MR. KLUGMAN: I have the same problem.

20 MR. HOSKINS: I'm asking yes or no.

21 MR. KLUGMAN: I understand that. There

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1 are grand jury secrecy issues here.

2 MR. HOSKINS: Not in Maryland.

3 MR. KLUGMAN: We're not in Maryland,
4 sir.

5 MR. HOSKINS: I'm just letting now this
6 issue has been ruled on by the trial judge, 6(e)
7 does not apply to this question.

8 MR. SCHEINER: 6(e) may not apply. But
9 if I can speak to that, the law is, and I know
10 federal law is and I think Maryland is the same,
11 and in any case Federal law applies, because
12 we're talking about a Federal grand jury, that
13 you have to show particularized need for this
14 information, if you want it, because this is
15 governed by a general policy of grand jury
16 secrecy.

17 MR. KLUGMAN: Let me just, he has not
18 asserted grand jury secrecy. I don't know under
19 what circumstances, if any, he has information
20 about other people. That's where we are. Let me
21 find out about that.

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1 MR. HOSKINS: Why don't you step outside
2 and maybe you can consult with counsel and you
3 can come back and tell me where we are. Does
4 that make sense?

5 MR. KLUGMAN: Why don't we do it right
6 here?

7 MR. HOSKINS: Okay.

8 MR. KLUGMAN: All right. Go ahead and
9 answer.

10 A. I don't know of anybody at CTR who has
11 been called to go before the grand jury.

12 Q. Were you represented by counsel at the
13 grand jury proceedings?

14 MR. KLUGMAN: Objection to the form.
15 You mean during the interview?

16 MR. HOSKINS: I guess that's a better
17 question.

18 A. Yes.

19 Q. The name of the lawyer?

20 A. Putzel, P-u-t-z-e-l. Pete. I'm not
21 sure Pete is his first name, but it was

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1 Mr. Putzel.

2 Q. You understand Mr. Putzel was retained
3 to represent you by Council for Tobacco Research,
4 correct?

5 MR. KLUGMAN: Objection to the
6 question.

7 A. Yes.

8 Q. In fact, he also represented you during
9 your Massachusetts deposition. Do you remember
10 that, sir?

11 A. Yes, sir.

12 Q. And in that deposition, you were asked
13 whether or not you were paying for Mr. Putzel,
14 and you testified that you were not. Do you
15 remember that, sir?

16 A. Yes.

17 Q. You understood that the Council for
18 Tobacco Research was paying the bills for this
19 attorney, correct? Could you enunciate?

20 A. Yes. I'm sorry. Well, it sees me
21 nodding.

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1 Q. Did you produce any documents to the
2 U.S. Attorney or the Assistant U.S. Attorney?

3 A. I have no documents.

4 Q. You used to have some documents?

5 A. Oh, yes. I had documents that were
6 subpoenaed for the Cippolone case, and they have
7 been long gone from my possession.

8 Q. Just to be clear for the record, no
9 additional documents were produced to the U.S.
10 Attorney's Office?

11 A. No. I had none.

12 Q. Was your interview tape recorded, do
13 you know?

14 A. I don't think so, unless the man with
15 her, was it Pellegi, was that his name, I don't
16 remember, had a tape recorder, I just don't
17 remember. I don't think so.

18 Q. You see the gentleman seated to your
19 left and my right?

20 A. No. There was no court stenographer
21 there that I can recall.

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1 Q. Were you shown any documents by the
2 U.S. Attorney's Office?

3 A. I believe I was.

4 Q. Do you remember the documents you were
5 shown?

6 A. No. I don't.

7 Q. Did you understand that you were being
8 shown documents from a set of 1500 documents that
9 were at issue before Judge Seriken?

10 MR. KLUGMAN: Objection to form.

11 A. No. I don't know whence the documents
12 came.

13 Q. Which one are we up to?

14 A. 11905.

15 MR. HOSKINS: Thank you, sir.

16 MR. KLUGMAN: All purpose witness.
17 Helps you find your place.

18 THE WITNESS: Well, we try to be
19 helpful.

20 Q. That's right. Did you ever hear of
21 Dr. Adlkofer?

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1 A. Yes.

2 Q. Who is Dr. Adlkofer?

3 A. He was a German scientist who, I'm not
4 sure whether he represented the German tobacco
5 organization, the cigarette company organization,
6 or the German branch of an American company.

7 I have forgotten. I think he may have
8 represented -- no, I believe almost certainly, he
9 consulted with an association of German tobacco
10 companies.

11 Q. And that association was called what,
12 do you remember?

13 A. I think I referred to it as the
14 Verband.

15 Q. V-e-r-b-a-n-d?

16 A. Yes.

17 Q. You understood that the Verband was the
18 equivalent of the CTR and the Tobacco Institute
19 put together, but representing German
20 manufacturers, correct?

21 MR. KLUGMAN: Objection to the form.

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1 A. I don't know what its constitution was
2 in the sense that you just described, but I knew
3 it was an association of German tobacco
4 industry. I knew the companies that operated
5 there were members of it.

6 Q. Did you understand, strike that.
7 To your knowledge, did the Verband fund
8 research?

9 A. I believe it did.

10 Q. And it funded research dealing with
11 smoking and health issues, correct?

12 A. Well, I'm not sure about the specific
13 research. I would have to assume that why else
14 would it fund research.

15 Q. Who is Dr. Hiriyama, do you remember?

16 A. Takishi Hiriyama, yes, he was a
17 Japanese scientist.

18 Q. How was it that you learned about
19 Dr. Hiriyama?

20 A. I have heard him speak at scientific
21 meetings, and I have read his published papers.

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1 Q. And what particular published papers of
2 Dr. Hiriyama do you recall reading?

3 A. I recall reading the first one, and I
4 believe it was published in the, either the BMJ,
5 the British Medical Journal, or the Lancet. I
6 can't remember the year, but it was a number of
7 years ago.

8 Q. What was that paper on, do you
9 remember?

10 A. Yes. I do.

11 Q. And what was it, sir?

12 A. That passive smoke or secondhand smoke,
13 smoke from the cigarettes of active smokers could
14 cause lung cancer in the nonsmoking spouse or
15 spouses of smokers.

16 Generally, I think that would sum it
17 up.

18 Q. And he studied Japanese smokers and
19 their wives, correct?

20 A. Well, at that time, yes.

21 Q. You attended meetings of the

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1 Communications Committee that discussed this
2 study, correct?

3 A. I don't remember. I may have, but I
4 don't remember.

5 Q. What did the Tobacco Institute do, if
6 anything, in response to the Hiriyama study?

7 MR. KLUGMAN: Objection to form.

8 A. I have no idea. I don't know. Did he
9 issue a statement? I really don't remember.

10 Are we through with these?

11 Q. You probably want to save the page.

12 I'm handing you what we'll mark as
13 Exhibit 125939. You understood, sir, that the
14 Communications Committee was technically a
15 committee of the Tobacco Institute, correct,
16 sir?

17 A. Yes.

18 Q. If you could look at Exhibit 12539 and
19 turn to the page that at the bottom reads 25192.
20 Do you have that before you, sir?

21 A. Yes.

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1 Q. You see it says at the top: Public
2 Relations Division, 1981 highlights.

3 It says: Conducted a multimedia
4 campaign to discredit a previously well
5 publicized Japanese study which warned that
6 nonsmokers are endangered by cigarette smoke in
7 the air. The campaign included two
8 advertisements run in newspapers in the largest
9 markets and in a score of prominent nationally
10 distributed magazines. Combined circulation of
11 all newspapers and magazines on the schedule,
12 approximately 24 million. A blitz of the major
13 newspapers in the nations top 50 markets, the
14 news magazines and wire services, which resulted
15 in 684 articles and editorials on the subject,
16 appearances on 75 radio and television news or
17 talk shows, specifically, related to the doubts
18 raised about the Japanese study. Major articles
19 in the Tobacco Observer, in company house organs
20 and in trade press conveying details of the story
21 to the tobacco family.

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1 Do you see that, sir?

2 A. Yes.

3 Q. Does that refresh your recollection
4 about the activities of the Tobacco Institute and
5 its Communications Committee in response to the
6 Hiriyama study?

7 MR. KLUGMAN: Objection to the form.

8 A. Well, I said before, I don't know
9 specifically what they did. But this, of course,
10 seems to be a summary. How they did this, I
11 don't -- well, they ran two advertisements. I
12 see.

13 Q. What role, if any, do you recall the
14 Communications Committee having in drafting those
15 advertisements?

16 MR. KLUGMAN: This is the one under the
17 first bullet here?

18 MR. HOSKINS: Yes.

19 A. You mean the two advertisements,
20 advertisements?

21 Q. Yes, sir.

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1 A. I don't know if it was done by
2 committee. I rather doubt it, but I'm sure the
3 Institute drafted them, wrote the copy, and it
4 want to members of the committee for comments and
5 so forth.

6 Q. What did you understand to be the
7 Tobacco Institute's position on this study?

8 MR. KLUGMAN: Objection to form.

9 A. Well, I rather you had asked that of
10 somebody who worked for the Tobacco Institute and
11 was involved with this.

12 I can just give an idea based upon what
13 I would have done. I'm sure the, I don't
14 remember the specific advertisement. I probably
15 saw them and probably commented on the drafts.

16 They might have been sent to me by
17 Mr. Kloepper. I don't remember specifically, but
18 probably I did see them in draft form.

19 And the idea would be to point out the
20 weaknesses and the holes in the study.

21 Q. And do you recall what role, if any,

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1 Dr. Kastenbaum played with respect to the
2 Hiriyama study?

3 A. No, no idea.

4 Q. Did you ever learn what Dr. Adlkofer of
5 the Verband's feeling was with respect to the
6 Hiriyama study?

7 A. I didn't even know he had -- well, I
8 had no idea that he was even involved. I would
9 not know anything in that area.

10 Q. Okay. I think we are done with that
11 one, sir.

12 Let me have 12057. Sir, I'm going to
13 hand you Exhibit 12057, a memo to file, Tom
14 Osdene, January 10, 1978. Do you see that, sir?

15 A. Yes.

16 Q. First sentence it makes reference to a
17 meeting in New York City in January 5, 1978.

18 At Mr. Goldsmith's request,
19 Dr. Seligman, Mr. Holtzman and I met with
20 Dr. Gardner, Dr. Hockett and Mr. Hoyt at the CTR
21 offices in New York.

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1 Sir, do you have a recollection of that
2 meeting?

3 A. No.

4 Q. Next sentence: The objective was to
5 review the contracts carried out by
6 Microbiological Associates, namely Contract 14
7 and Contract 25. It is Contract 14 that earlier
8 concerned Osdene.

9 Sir, does this refresh your
10 recollection of there being a meeting between
11 lawyers and researchers for Philip Morris and the
12 director, sorry, Scientific Director and Research
13 Director of CTR on the issue of MAI contracts in
14 January of 1978?

15 A. I did not know about the meeting. I
16 was not invited to attend. If I was and did
17 attend, I just don't remember it at all.

18 Q. Do you ever recall hearing of something
19 known as the "Osdene criticism"?

20 A. No.

21 Q. If you could go to the bottom paragraph

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1 on the page. Dr. Seligman brought up the grant
2 by Dr. Abood in which one of the stated --

3 A. Aims I believe is the word.

4 Q. -- aims was to make a clinically
5 acceptable antagonist to nicotine. This goal
6 would have the potential of putting the tobacco
7 manufacturers out of business.

8 You see that reference, sir?

9 A. Yes.

10 Q. Does that refresh your recollection of
11 ever learning that Philip Morris' researchers
12 were concerned that Dr. Abood's, that one of the
13 names of Dr. Abood's research had the potential
14 of putting the tobacco manufacturers out of
15 business?

16 MR. KLUGMAN: Objection to the form.

17 A. No.

18 Q. Sir, I'm going to hand you what we're
19 marking as Exhibit 11986 to the deposition. It
20 is a memo from Seligman to his file on CTR.

21 On January 12, 1978, the writer was

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1 contacted by Alex Holtzman concerning the
2 discussion the industry lawyers had about CTR.
3 Evidently, the other companies were as concerned
4 as we were about the trends at CTR.

5 A representation, Pepples and Roemer,
6 went to see Add Yeaman.

7 Now, Roemer, you understand was a
8 lawyer for Reynolds, it was Chuck Roemer?

9 A. No. It is Jack Roemer, and it is
10 misspelled here, it is R-o-e-m-e-r.

11 Q. Mr. Yeaman indicated the following:
12 The mouse work with susceptibility strains has
13 been discontinued. Do you see that reference?

14 A. Yes.

15 Q. Does that refresh your recollection as
16 to whether or not you had any knowledge that MAI
17 was performing inhalation studies with mice
18 inbred to be specially susceptible to cancer?

19 MR. KLUGMAN: Objection to form.

20 A. No. No.

21 Q. Next is: All work with tobacco

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1 fractions has been discontinued. Do you see that
2 reference?

3 A. Yes.

4 Q. Does that refresh your recollection
5 about the fact that in late 1977, or up through
6 late 1977, MAI was performing inhalation studies
7 with tobacco fractions?

8 A. No.

9 Q. Does that refresh your recollection of
10 learning that there came a time when this tobacco
11 fraction inhalation work was discontinued?

12 MR. KLUGMAN: Objection to form.

13 A. No. No.

14 Q. Go down to the fourth one. The work
15 with AHH appears to be producing no definitive
16 results. Results are too variable and the total
17 seems to be grinding to a halt. You see that,
18 sir?

19 A. Yes.

20 Q. Does that refresh your recollection
21 about concerns that may or may not have been

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1 raised with respect to the AHH research in late
2 1977?

3 A. No.

4 Q. Next is: Mr. Yeaman felt the nicotine
5 work should be continued because it is important
6 to find the binding centers in the brain to
7 determine how nicotine acts in the brain.

8 Does that refresh your recollection
9 about the type of nicotine work that was being
10 proposed in late 1977 and early 1978?

11 A. No.

12 Q. Next sentence: The writer questioned
13 Alex Holtzman concerning the development of an
14 antagonist for nicotine resulting from the
15 contract with Dr. Abood.

16 Sir, does that statement refresh your
17 recollection about any knowledge you might have
18 had about Abood's nicotine research?

19 A. No.

20 Q. I'll hand you what we've marked as
21 Exhibit 11906.

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1 Do you remember where the offices of
2 Lorillard were in New York City?

3 A. No. I do not.

4 Q. Ever attend a meeting at the offices of
5 Lorillard?

6 A. I don't think I was ever at the
7 offices, the Lorillard office. I may have been,
8 but I just can't recall ever having been there.

9 Q. Do you recall ever learning of a
10 meeting of counsel that occurred on February 1,
11 1978, at the offices of Lorillard in New York
12 City?

13 A. No.

14 Q. Turn to page two of the document,
15 please. You see section one, CTR?

16 A. Yes.

17 Q.

18

19

20

21

REDACTED

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RE:

You see that reference, sir?

A. Yes.

Q. Did you ever learn after February, 1978, about a discussion of the Committee of Counsel dealing with any of these issues?

A. No.

MR. KLUGMAN: You want him to read this section?

MR. HOSKINS: No.

Q. If you could, please, turn to page ten of the document.

REDACTED

A. Yes.

Q.

REDACTED

A. Yes.

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1 Q. Does that refresh any recollection you
2 might have had about the smoke fractionation
3 research being done at MAI?

4 A. No, not at all.

5 Q. Turn to page eleven, please. You see
6 reference B, REDACTED

7 A. Yes. I do.

8 Q.

9

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You see that reference?

17

A. Yes.

18

19

Q. That comports with what you understood
the AHH research to be about, correct, sir?

20

MR. KLUGMAN: Objection to the form.

21

A. I'm not sure. I don't recall believing

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1 that about AHH or having read any scientific
2 reports related to that.

3 Q. Does this phrase refresh any
4 recollection you may or may not have had with
5 respect to the discussions at CTR about AHH
6 research?

7 A. No.

8 Q. Do you recall, if you could turn,
9 please, sir, to page 12. Second paragraph from
10 the bottom:
11
12

1. REDACTED
14
15

16 Do you see that, sir?

17 A. Yes.

18 Q. What's Downstate Medical Center? Is
19 that Cornell University Hospital?

20 MR. KLUGMAN: Objection.

21 A. No.

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1 Q. Tell the jury what it is.

2 A. As far as I know it is a part of the
3 state university system and it is a medical
4 center in Brooklyn.

5 Q. Ever hear of Upstate Medical Center?

6 A. No, sir. Is there one?

7 Q. Yes, sir, in Syracuse. Do you recall
8 that symposium that was supposed to be held at
9 the Downstate Medical Center?

10 A. No. I do not.

11 Q. Do you have any recollection one way or
12 the other of whether or not the symposium was
13 held?

14 A. I have no idea that there was such a
15 meeting, such a conference.

16 Q. We talked about Dr. Kouri, K-o-u-r-i,
17 correct?

18 A. I think you thought it was K-h-o-u-r-i.

19 Q. He was at MAI, correct?

20 A. Yes.

21 Q. Did you ever come to learn that the

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1 Committee of Counsel was concerned that Dr. Kouri
2 was trying to establish the link between smoking
3 and lung cancer?

4 MR. KLUGMAN: Objection to form.

5 A. No. I was never aware of anything like
6 that.

7 Q. What understanding, if any, did you
8 have with respect to what Dr. Kreisher felt about
9 the AHH work?

10 A. Nothing at all. I have no knowledge of
11 that at all.

12 Q. If you could please turn to page 14.
13 Second paragraph from the bottom:

14

15

16

17

18

RETRACTED

19

20

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Do you see that, sir?

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1 A. Yes.

2 Q. Does that refresh your recollection or
3 any recollection you might have had about whether
4 or not Dr. Kreisher believed in 1978 that the,
5 that proof linking smoking to lung cancer had
6 been presented?

7 MR. KLUGMAN: Objection to the form.

8 A. No.

9 Q. Does it refresh any recollection you
10 might have had about whether or not Dr. Kouri
11 believed in 1978 that proof linking smoking to
12 lung cancer had been presented?

13 A. I'm afraid not, no.

14 Q. If we could please turn to page 15.
15 Section C, smoke inhalation program. Roemer,
16 that's Jack Roemer, correct?

17 A. Yes. I'm sure.

18 Q. General counsel with RJR?

19 A. Yes.

20 Q. Spelled correctly there?

21 A. Yes, it is.

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Do you see that reference, sir?

A. Yes.

Q. Does that refresh your recollection as to any knowledge you had about the use of methylcholanthrene in MAI inhalation studies?

A. No.

Q. Did you ever learn that methylcholanthrene was being implanted into the laboratory animals?

A. I don't recall that.

Q. Turn to page 16, please.

REDACTED

You see

that reference, sir?

A. Yes.

REDACTED

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REDACTED

REDACTED

Does this, do these two paragraphs
refresh your recollection about the role Dr. Ford
played with respect to CNS nicotine research?

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1 MR. KLUGMAN: Objection to the form.

2 A. No.

3 Q. Does this refresh any recollection you
4 may have of information you learned while at CTR
5 concerning CNS nicotine research?

6 MR. KLUGMAN: Same objection.

7 A. I know I talked with Don Ford about
8 that. He had given me some of his materials from
9 when he was at Downstate or maybe it was not his
10 materials but others.

11 No. I guess it was his, pictures of
12 slides he had done, he had made of animals, not
13 related to smoking or anything like that, but
14 related to the brain.

15 He was an anatomist who had done some
16 excellent work, as I recall, with the brains of
17 rodents, mice. I'm sure I had discussed this
18 whole area with Don from time to time, when we
19 were both in the office together.

20 I can't recall specific instances or
21 specific items that we talked about, other than

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1 to say we did talk about this area.

2 I would often go to Don if I had been
3 at a meeting where there was something related to
4 his area of expertise that I did not fully
5 understand. And he would explain it to me.

6 In fact, there was one time when he
7 wrote together a or put together for me a small
8 dictionary of some of these complicated terms
9 with his more easy-to-understand explanations.

10 And that helped me in the memos I wrote
11 for CTR and the Advisory Board and for my other
12 work in freelance science writing.

13 Q. What were some of the terms he helped
14 define?

15 A. Oh, I can't recall them. But I guess
16 some of them were so convoluted I just can't
17 remember them.

18 Q. Like was analog one of them?

19 A. I can't recall. I rather doubt that.
20 but Don was always very helpful in straightening
21 me out with certain questions I had.

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1 Q. If you could skip down a paragraph **REDACTED**

2 **REDACTED** Let me
3 tell you, "I" is Janet Brown in this document.

4

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Do you see that, sir?

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1 A. Yes.

2 Q. Does that refresh your recollection
3 about concerns that the lawyers were raising with
4 respect to the CNS research?

5 A. No. I don't recall that at all.

6 Q. This comports, however, with your
7 recollection of what Ed Jacob said to the SAB,
8 correct, sir?

9 MR. KLUGMAN: Objection to the form.

10 A. As I recall, and I think I tried to
11 explain earlier today, that he was talking about
12 a

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Q.

MR. KLUGMAN: Mr. Hoskins, you have
asked him that question about 14 times. He
obviously doesn't remember. If you want to try
to refresh his recollection, I don't think it is
particularly fruitful, but it is certainly

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1 acceptable. Don't keep asking him the same
2 question over and over and over again.

3 Q.

REDACTED

4
5 MR. KLUGMAN: Same objection, go
6 ahead.

7 A. I don't remember that at all. I just
8 remember the commercial element being involved.

9 Q. And you recall that the commercial
10 element that was involved included the
11 possibility that the research could have the
12 potential effect of putting the tobacco industry
13 out of business overnight, correct?

14 MR. KLUGMAN: Object to the form,
15 Mr. Hoskins, that really is improper. You can go
16 ahead and answer, Mr. Zahn.

17 A. I don't remember that at all.

18 Q. Did you recall having any discussion
19 with Dr. Ford about the issue of potential
20 commercial implications of the CNS research?

21 A. No.

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1 Q. You understood that Dr. Ford did not
2 agree that this research should be out of bounds,
3 correct?

4 MR. KLUGMAN: Objection.

5 A. I don't know. I have no idea.

6 Q. Do you have any knowledge as to whether
7 or not Dr. Kreisher believed this research to be
8 out of bounds?

9 A. No.

10 Q. What did Dr. Abood -- strike that.
11 Do you have any knowledge about what
12 Dr. Abood thought about whether or not this
13 research should be out of bounds?

14 MR. KLUGMAN: Objection to form.

15 A. No. Sorry. No.

16 Q. You remember Dr. Craig Head, correct?

17 A. I know he was on the board, the
18 Scientific Advisory Board for a while, a very
19 short while.

20 Q. He resigned?

21 A. Excuse me.

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1 Q. I'm sorry.

2 A. I'm not sure I ever met him. He may
3 have been on the board that short a time, and
4 that covered a period where I had missed an SAB
5 meeting.

6 I don't remember, I have the feeling
7 though that I did meet him, but I'm not sure, and
8 I can't remember when or where, but it is so
9 vague that I want to say, no, I never did meet
10 him.

11 Q. Do you recall that Dr. Craig Head only
12 served on the SAB for a very short while?

13 A. Yes. I do remember that.

14 Q. You recall he resigned from the SAB as
15 opposed to being asked to leave, correct?

16 A. Yes, I believe so.

17 Q. Do you recall that he resigned because
18 the SAB decided that condensate fraction research
19 would not be funded?

20 MR. KLUGMAN: Objection to the form.
21 It is contrary to the facts. It is contrary to

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1 the record. You can go ahead and answer,
2 Mr. Zahn.

3 A. No. I did not know that or ever hear
4 anything about that.

5 Q. Did you ever hear that he resigned in
6 protest to the fact that the companies had told
7 SAB that they could not conduct condensate
8 fraction research?

9 MR. KLUGMAN: Same objection. You can
10 Go ahead and answer.

11 A. No. I'm not aware of that. Never
12 heard of it.

13 MR. SCHEINER: David, before we get too
14 far away from this, I want to clarify something
15 about privileged documents.

16 MR. HOSKINS: Go ahead.

17 MR. SCHEINER: What I figured was we had
18 a standing objection to the privileged documents
19 and we don't have to bring it up every time I see
20 one.

21 MR. KRISTAL: No. We can't possibly do

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1 the Ohio.

2 MR. KLUGMAN: Let me just say when we
3 are doing the record, to make it easy, I believe
4 11906 is a document as to which there are
5 assertions of privilege and you are entitled to
6 use under the various court orders, so when
7 whoever is going back over the record looks, that
8 person should look for the No. 11906. That will
9 make it easier, and the same. I don't need to
10 repeat it each time, Jerry, I hope.

11 MR. KRISTAL: You don't need to repeat
12 it each time with respect to a document for which
13 you have asserted the privilege.

14 MR. SCHEINER: But for each document you
15 want us to --

16 MR. KRISTAL: Yes. Sure.

17 MR. SCHEINER: He is asking when we see
18 a document that we think is privileged, that we
19 say so.

20 MR. KLUGMAN: Fine. This document and
21 the testimony about it are not part of the Ohio

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1 record and shouldn't be, the testimony shouldn't
2 be shared with people outside of the Richardson
3 case, 11906. Is that clear? I should say is it
4 clear and agreeable?

5 MR. KRISTAL: If you are asserting a
6 privilege that's the result of an assertion of
7 privilege. What is the privilege, though? We'll
8 leave it at that. I think at some point you have
9 to articulate a little better what the privilege
10 is.

11 MR. KLUGMAN: It has been articulated.
12 I don't have it in front of me. I would be
13 guessing and no point in trying to reinvent at
14 this juncture.

15 MR. HOSKINS: Ready to go, counsel?

16 MR. KLUGMAN: Sure. I'm ready.

17 Q. Sir, did you ever have any personnel
18 problems with Dr. Kreisher personally?

19 MR. KLUGMAN: Excuse me. Was it
20 personnel problems or personal problems?

21 Q. Personnel, personal, did you ever have

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1 any problems with Dr. Kreisher personally?

2 A. Not that I can recall.

3 Q. Did you have an opinion, what did you
4 think of Dr. Kreisher, if anything?

5 MR. KLUGMAN: Objection to the form.
6 Go ahead.

7 A. I didn't think he was much of a
8 scientist. I had been at a number of meetings
9 with him, where, from what I could see, he rarely
10 attended scientific sessions to listen to some of
11 the speakers and maybe learn something. I don't
12 want to get too personal about it.

13 Q. Fair to say you did not hold him in
14 high personal regard?

15 A. I think that's true, yes.

16 Q. Did you ever hear Dr. Kreisher
17 criticize any of the scientists at CTR?

18 A. Oh, he may have had a snide remark here
19 or there, but I can't recall specifically. I
20 don't think he would have been stupid enough to
21 have made statements of this kind in front of me.

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1 Q. Did you ever hear him state that CTR
2 was run by the lawyers?

3 MR. KLUGMAN: Objection to the form.

4 A. No. I don't remember that.

5 MR. HOSKINS: Sir, let me hand you what
6 we're going to mark as Exhibit 11907.

7 MR. KLUGMAN: Again, I believe this is
8 a privileged document or a document to which
9 privilege has been asserted, and that we will
10 permit it to be used and questions to be answered
11 under the various orders in the Richardson case.

12 We won't permit it to be used in the
13 Ohio Iron Workers case. Are we on the same page
14 on that one, Jerry?

15 MR. KRISTAL: We have an agreement I
16 think is on the record. If you say we have a
17 privilege we're asserting on this document, the
18 agreement will go into effect.

19 MR. KLUGMAN: I didn't know whether I
20 had to do it for each document.

21 MR. KRISTAL: You can just say we're

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1 asserting a privilege.

2 Q. Sir, this makes reference to a meeting
3 of counsel, February 23, 1978, at American Brands
4 International offices in New York City. Did you
5 know who Mr. Gassman was?

6 A. No. I don't remember him at all.

7 Q. Did you ever hear SAB referred to as a
8 mail drop?

9 A. No.

10 Q. Did you ever hear of something known as
11 the mail drop concept of SAB?

12 A. No.

13 Q. If you could please turn to page 12.

14 It says:

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And then

there are other ones there that you are welcome
to read.

My question, sir, is: Does that
summary refresh your recollection or any
recollection you might have had about the early
1978 time frame with respect to contract research
being performed by MAI?

A. No.

Q. Did you ever understand or learn that
in early 1978, the member companies were willing
only to fund an interim budget as long as it
wasn't targeted for MAI research?

A. No.

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1 MR. KLUGMAN: Well, hold on a second.
2 Objection to the form. Go ahead. Do you recall
3 the question?

4 A. I'm sorry. Would you repeat it.

5 Q. My question is: Does that summary
6 refresh your recollection or any recollection you
7 might have had about the early 1978 time frame
8 with respect to contract research being performed
9 by MAI?

10 That actually wasn't the right
11 question. Did you ever understand or learn that
12 in early 1978, the member companies were willing
13 only to fund an interim budget as long as it
14 wasn't to be used for MAI research?

15 MR. KLUGMAN: Objection to the form.

16 A. I never heard of anything like that.

17 MR. HOSKINS: Okay. We're done with
18 that document. Why don't we take our first
19 afternoon break.

20 MR. SCHEINER: I wanted to ask you
21 something, David, before we break.

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1 MR. HOSKINS: Are we on the record?

2 MR. SCHEINER: Yes.

3 THE WITNESS: Excuse me. Do you need
4 me?

5 MR. SCHEINER: No. I don't need you.

6 VIDEO OPERATOR: You want to go off the
7 video record?

8 MR. SCHEINER: No. Let's stay on.

9 MR. HOSKINS: Let's stay.

10 MR. SCHEINER: David, you asked Leonard,
11 I think your question was: You were told you
12 were not a target of the investigation; isn't
13 that true? Referring to Ms. Liang telling him
14 that.

15 I would like to know what is the basis
16 for your asking him the question.

17 MR. HOSKINS: Well, I just asked him if
18 he was a target or not.

19 MR. SCHEINER: Well, no, you didn't.
20 You said you were told you were not a target of
21 the investigation. You were suggesting the

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1 answer.

2 What's the basis for your believing
3 that he was told he was not a target of the
4 investigation?

5 MR. HOSKINS: Well, I have a letter, I
6 have some memos here about that investigation.

7 MR. SCHEINER: Written by whom?

8 MR. HOSKINS: Lawyers for the
9 defendants.

10 MR. SCHEINER: Lawyers for the
11 defendants. You told him he never received a
12 target letter. You asked him. Same source?

13 MR. HOSKINS: Yes. That was a leading
14 question. Yes, sir.

15 MR. SCHEINER: You believe he never
16 received a target letter?

17 MR. HOSKINS: That's my good faith
18 belief. That's why I asked him.

19 MR. SCHEINER: And then you said one of
20 the things she talked about with you was a memo
21 regarding Freddy Homberger, same basis,

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1 defendant's memo?

2 MR. HOSKINS: Yes, sir.

3 MR. SCHEINER: Okay. That's all.

4 VIDEO OPERATOR: Off the record, the
5 time is 2:21.

6 (Discussion off the record.)

7 VIDEO OPERATOR: Back on the record,
8 the time is 2:35.

9 Q. Sir, did you ever hear of Operation
10 Berkshire?

11 A. No.

12 Q. Ever hear of Operation or Project Down
13 Under?

14 A. No.

15 MR. HOSKINS: I want to direct your
16 attention to February 5, 1970. Give me 20203,
17 please.

18 MR. KLUGMAN: February 5 of what year?

19 MR. HOSKINS: 1970.

20 Q. Sir, I'm going to hand you what we're
21 marking as 20303 to this deposition. Let me

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1 substitute could I, sir.

2 Did you know Mr. Landry or Mr. Selesby
3 at Philip Morris?

4 A. Landry seems a little familiar, but I
5 really don't remember either name or either one.

6 Q. Attached is a copy of a paper read to
7 the American Cancer Society by Drs. Hammond and
8 Auerbach this morning and on which you read a
9 wire service release. This report describes the
10 study in which beagle dogs smoke cigarettes for
11 up to 2.3 years through a throat opening to their
12 wind pipes.

13 The important finding is that two of
14 the 86 dogs which started in the test developed
15 "early squamous cell bronchial carcinoma" i.e.
16 the most common lung cancer occurring in man.

17 This is the first time that cigarette
18 smoke, as a direct agent, has produced lung
19 cancer in an animal in any reliably conducted
20 experiment.

21 Do you see that sentence, sir?

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1 A. Yes.

2 Q. Does that refresh your recollection
3 about the Hammond and Auerbach paper that was
4 read at the American Cancer Society in early
5 1970?

6 MR. KLUGMAN: Objection to form.

7 A. I don't remember if it was presented at
8 the ACS meeting; but, yes, it refreshes my
9 recollection about the experiment.

10 Q. What recollection do you have of the
11 tobacco industry's response to the Hammond and
12 Auerbach press conference, if any?

13 A. I think I attended the press
14 conference. I'm trying to remember. I mean this
15 is almost 30 years ago. And I think that we
16 arranged for Joe Cullman to appear on television
17 and make a comment about the study, representing,
18 I don't know, the industry or CTR. That I don't
19 recall.

20 And unless I am confusing this with
21 something else, but I don't believe I am, and

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1 riding with Cullman in a limousine, in his car,
2 to go to the studio, a studio, and he suddenly
3 got cold feet and decided he wouldn't do it.

4 And I did not try to dissuade him.
5 When Cullman made up his mind to do or not to do
6 something, he had the power so that he did what
7 he wanted to.

8 That's about all I remember. But I
9 can't recall if the Institute made a statement or
10 if they did, what it said. I'm unsure about it,
11 about the details of that day or even the next
12 day.

13 Q. In that time period, Mr. Cullman was,
14 what role, if any, did he have with CTR?

15 A. I think he had a title on the board or
16 something like that, I'm not sure, if I am
17 remembering the situation correctly.

18 Q. What do you recall the reaction of the
19 CTR staff to have been to the announcement by
20 Hammond and Auerbach of their conclusions?

21 MR. KLUGMAN: Objection to form.

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1 A. Oh, I don't even know if I discussed --
2 I certainly didn't discuss it with him that day
3 or the next day or whatever, if I ever did
4 discuss it with them.

5 Q. You do recall that the Hammond and
6 Auerbach press conference received wide
7 publicity?

8 A. Oh, absolutely, yes.

9 Q. It was considered a break through in
10 science, would you agree with that, sir?

11 MR. KLUGMAN: Objection to form.

12 A. Not really. I mean break through is a
13 word that responsible journalists rarely use,
14 especially responsible science writers.

15 And this particular study smoked the
16 animals in a unique way that no way approximated
17 by any stretch of the custom or the habit of
18 human smoking.

19 And I thought, I'm trying to remember
20 now, that I saw a film clip of the experiment, a
21 moving picture, and one thing that struck me, not

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1 just the horrendous sight of the animals with
2 tracheostomies with the cigarette in the tube
3 stuck in their trachea. I thought the
4 surroundings in which the experiment was done
5 were filthy. I mean there was dirt. I think I
6 remember seeing dirt on the floor of the
7 laboratory, trash, waste, water, could have been
8 excrement, I don't know.

9 I did mention that to someone. I may
10 have put it in a report. I don't even know if I
11 did a report or if I included that.

12 Q. Now, is this film clip you are
13 referring to the film that was produced by the
14 Tobacco Institute about the study?

15 A. No. I thought it was a film that the
16 ACS had shown at the press conference.

17 Q. Do you recall, sir, that --

18 A. I believe it was, sir, I could be
19 wrong.

20 Q. Do you recall, sir, that the
21 Communications Committee developed a film about

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1 the Auerbach Hammond smoking study?

2 MR. KLUGMAN: Objection to form.

3 A. I don't remember that. Sorry. I don't
4 remember that.

5 Q. Do you recall attending meetings of the
6 Communications Committee that dealt with the
7 Hammond Auerbach findings?

8 A. I don't remember. I probably did, but
9 I don't remember.

10 Q. Do you recall that the press conference
11 of Hammond and Auerbach received a great deal of
12 press coverage because this was the first time
13 scientists had stated that they had developed a
14 similar, a cancer similar to the most common lung
15 cancer in an experimental animal?

16 MR. KLUGMAN: Objection to the form.

17 A. Yes, tremendous attention to it, press
18 attention.

19 Q. You understand, sir, when humans smoke,
20 they use their hands, correct?

21 A. You mean to hold the cigarette?

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1 Q. Yes, sir.

2 A. Obviously.

3 Q. And they take their hands and they put
4 the cigarette to their lips, correct?

5 A. Yes.

6 Q. Send some people hold the cigarette
7 there with their hands and some people let their
8 lips hold the cigarette, correct?

9 A. I suppose.

10 Q. You understand that humans know how to
11 inhale a cigarette, correct?

12 A. Yes.

13 Q. You also understand that there is no
14 way a dog can ever smoke a cigarette the same way
15 a human can, correct?

16 A. I guess I would have to say yes, but
17 primates have been taught to smoke like a human.
18 A dog is not a primate, they are much further
19 down the chain.

20 Q. And so you understand, sir, that there
21 had to be a way to introduce the smoke into the

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1 trachea and in the lungs of the dog, correct,
2 sir?

3 MR. KLUGMAN: Let me object,
4 Mr. Hoskins and ask you to clarify. Are you
5 asking him whether he sees that is sitting here
6 today or whether that was something on his mind
7 in 1970?

8 Q. You understand today and in 1970 --

9 A. Mr. Hoskins, I'm not a scientist, and I
10 cannot speak as a scientist to the, I'm not sure
11 if validity is the correct word, but I'll use the
12 validity of this type of experiment.

13 I know some scientists believe you have
14 to go to extremes when you start a certain
15 project and see what develops and then maybe you
16 can soften the approach for the results that you
17 want to obtain.

18 But I remember hearing what, not
19 hearing, being aware of scientific opinion at
20 this time or shortly thereafter about that's a
21 hell of a way to smoke an animal, to cut a hole

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1 in its throat and pump in cigarette smoke,
2 whether the animal has hands or paws to hold it,
3 I don't know whether that has any relevance. I
4 can't comment on that.

5 Q. What do you recall the tobacco
6 industry's ultimate response to this press
7 conference was? Do you remember?

8 MR. KLUGMAN: Objection to form.

9 A. I can't recall, but I would guess it
10 might be related to my crude comments about this
11 is some way or the wrong way to approach this
12 subject by surgically cutting a hole in an
13 animal's throat and putting a cigarette in
14 there. I don't know. I would assume that.

15 Q. Do you recall an advertising campaign
16 that was undertaken?

17 A. No. I don't, not specifically.

18 Q. Sir, I'm going to hand you what's been
19 marked as Deposition Exhibit 11312 and ask you if
20 that document refreshes your recollection about
21 an advertisement run by the Tobacco Institute?

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1 A. It is familiar. The specifics, I would
2 have to read it. I may well have seen a draft of
3 this. I don't know.

4 Q. And, sir, I'm going to hand you a
5 blowup of an advertisement that ran in the
6 Baltimore Sun on Monday, May 4, 1970, and just
7 ask that you look at it and then show it to the
8 camera.

9 A. It is somewhat different.

10 Q. Could you just turn it to the camera?

11 MR. KLUGMAN: What are you asking him
12 to do with this?

13 MR. HOSKINS: Turn it to the camera

14 MR. KLUGMAN: Just display it.

15 MR. SCHEINER: Objection.

16 Q. Referring to that format, does that
17 refresh your recollection as an ad that ran in
18 the nation's newspapers, including the Baltimore
19 Sun?

20 A. I can't say. It probably does, but it
21 is so --

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1 MR. KLUGMAN: Mr. Zahn, he wants to
2 know if this helps you remember about it. That's
3 the question. I won't say it was easy, but
4 that's the question.

5 A. Well, I don't remember that there were
6 two ads, but I was sure that they did something
7 like this. They ran an ad. I didn't know they
8 ran two of them.

9 Q. Did you have any role in developing the
10 advertisements?

11 A. I said a moment ago, I don't recall,
12 but I probably saw a draft. I'm not sure that I
13 did, and maybe I did or did not, and maybe there
14 wasn't enough time for them or any inclination,
15 when I say "them" I mean the Institute, to seek
16 my comments on it.

17 I just don't recall. But I'm sorry, I
18 would not be surprised if you produced a note in
19 which I said, gee, it looks great or change this
20 word or whatever.

21 Q. And, sir, do you see those letters, the

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1 bottom three at the bottom of the ad?

2 MR. KLUGMAN: Do you have a copy for
3 me, Mr. Hoskins?

4 MR. HOSKINS: Please just take a look at
5 it.

6 Q. My question is going to be, sir, if you
7 recall the letters from Mr. Cullman and then the
8 response from the chairman of the American Cancer
9 Society?

10 A. No. I do not.

11 Q. Do you recall, please let me have
12 20311.

13 MR. KLUGMAN: Can you give us a copy of
14 this, or is it something you can send us to?

15 (Discussion off the record.)

16 Q. Sir, I'm going to hand you what we've
17 marked as 20312.

18 You knew William Kloefer at the
19 Tobacco Institute, correct?

20 A. Yes.

21 Q. He was vice-president of public

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1 relations in 1970, do you recall that, sir?

2 A. I believe so, that was his title.

3 Q. This letter is drafted to David R.
4 Hardy at Shook Hardy in Kansas City, correct?

5 MR. KLUGMAN: Excuse me, Mr. Hoskins.
6 is this a document that's in the Bleily group? I
7 don't have any idea one way or the other.

8 MR. HOSKINS: It probably is.

9 MR. KLUGMAN: Subject to confirming
10 that it isn't, let's go on that and say that it
11 is, and, Jerry, if you got that noted in that,
12 that invokes the procedures and agreements we've
13 discussed in the past, correct?

14 MR. KRISTAL: You don't need to keep
15 asking me, because my answer will always be the
16 same.

17 Q. You see here it says: Attached as
18 orally approved by your office and in light of
19 comments made by members of the Communications
20 Committee is the letter which Horace will
21 promptly send to selected members of the Congress

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1 in connection with the smoking dog matter and
2 which is to be subject to the further
3 consideration of the Communications Committee as
4 the vehicle for Tobacco Institute advertisement.
5 Do you see that reference, sir?

6 A. Yes.

7 Q. Do you recall as a member of the
8 Communications Committee reviewing a proposed
9 letter to Congress that was to be signed by
10 Horace Kornegay?

11 A. Specifically, no. I probably did,
12 though. But I cannot recall it.

13 Q. 20313. I show you what we're marking
14 as 20313. It is a memo that is shown to have
15 been addressed to you from Mr. Kloefer dated
16 October 7, 1970.

17 A. Me and perhaps --

18 Q. You are one of the addressees?

19 A. Yes.

20 Q. Who is Anderson?

21 A. God, I haven't thought of that name in

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1 so long. It has to be Billy or William Anderson
2 who was the head of some tobacco group in the
3 south. I can't remember the name of it.

4 Q. A member of the Communications
5 Committee?

6 A. I would assume so, since his name is
7 here, but I don't know for sure.

8 Q. Blaylock, who is Blaylock?

9 A. John Blaylock was, I don't know what
10 his exact title was. I guess it was
11 vice-president public relations, public
12 information for Brown & Williamson.

13 Q. How about Bowling, was that Jim
14 Bowling?

15 A. Jim Bowling at Philip Morris.

16 Q. He was a member of the Communications
17 Committee, correct?

18 A. Yes, I think so. I remember him.

19 Q. Who was Brayman, B-r-a-y-m-a-n?

20 A. I don't remember that at all.

21 Q. How about Bresnahan, B-r-e-s-n-a-n-a-n?

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1 A. I don't remember that.

2 Q. Dowdell, D-o-w-d-e-l-l?

3 A. Vague, but these cells up here just
4 won't go back that far. I can't even pinpoint
5 the company or the organization.

6 Q. Frye?

7 A. The same with Frye, I don't remember
8 him.

9 Q. Provost?

10 A. Yeah, Dan Provost who did public
11 relations, maybe even marketing at one time for
12 Liggett & Meyers.

13 Q. We know Mr. Hardy, Mr. Holtzman,
14 Mr. Shinn and Mr. Stevens?

15 A. Yeah.

16 Q. Did we talk about Stinnette before?

17 A. Richard Stinnette, I don't remember
18 what company he was with.

19 Q. How about Wade?

20 A. Charles Wade had headed up the public
21 relations for Reynolds, R.J. Reynolds. That's

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1 about all I can do is to remember who Zahn is on
2 this memo.

3 Q. It says: Attached is Mr. Kornegay's
4 letter to Members of Congress reciting the
5 lamentable history of the smoking dogs. Also is
6 attached a copy of the news release about the
7 letter we will distribute to the press widely for
8 use in the PMs October 12?

9 A. Yes.

10 Q. Do you see that, sir?

11 A. Yes.

12 Q. Does that refresh any recollection you
13 might have about the role of the Communications
14 Committee with respect to the Hammond Auerbach
15 study?

16 A. Well, obviously, they, according on
17 this, they got the copy of the letter, and had a
18 day or two to make a comment before it was issued
19 and whatever.

20 Q. And do you recall that Mr. Kornegay's
21 letter called the Hammond Auerbach study one of

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1 the great scientific hoaxes of our time?

2 A. I don't remember that at all.

3 Q. 20314, sir, if you would refer to that,
4 it is dated October 9, 1970, captioned Letter to
5 Members of Congress.

6 First line: This letter is being sent
7 to you to reveal the facts about what may be one
8 of the great scientific hoaxes of our time.

9 Do you see that reference?

10 A. Yes.

11 Q. Does that refresh your recollection
12 that the Tobacco Institute stated publicly that
13 they believed the Hammond Auerbach study to be
14 one of the great scientific hoaxes of our time?

15 MR. KLUGMAN: Objection to the form.

16 A. That's what the letter says. That's
17 what the Institute is saying.

18 Q. Do you have any recollection
19 independent of this letter of similar efforts by
20 the Tobacco Institute to label the Hammond
21 Auerbach study a scientific hoax?

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1 A. Mr. Hoskins, I don't even remember this
2 letter, although I know I saw it and may well
3 have commented on it.

4 Q. Now, sir --

5 A. So I don't recall any other efforts the
6 Institute might have undertaken in regard to the
7 study, the dog study.

8 Q. You understood, sir, that the Tobacco
9 Institute was also made up of member companies,
10 correct?

11 A. Yes.

12 Q. The same member companies that formed
13 the Council for Tobacco Research formed the
14 Tobacco Institute, you understood that?

15 MR. KLUGMAN: Objection to the form.

16 A. Not completely, but pretty much so, I
17 believe.

18 Q. You understood that the Tobacco
19 Institute served as the spokesperson for the
20 tobacco industry, correct, sir?

21 A. It was a trade association for the

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1 industry, the first of its kind.

2 Q. And it, when it made statements to the
3 public, it was making them on behalf of the
4 cigarette manufacturers that formed the
5 membership of the Tobacco Institute, that was
6 your understanding, correct?

7 MR. KLUGMAN: Objection, particularly
8 insofar as it calls for a legal conclusion.

9 A. Right.

10 Q. Sir, I'm sorry. Were you aware that
11 Drs. Auerbach and Hammond invited Sheldon Summers
12 to review the slides of their smoking study?

13 A. Well, I know that review, I think that
14 review came about, but not in the manner that you
15 have just stated.

16 Q. What is your understanding of how the
17 review came about?

18 MR. KLUGMAN: Objection the to the
19 form, lack of foundation. Go ahead and answer.

20 A. If there was an invitation, as I
21 recall, I think the Cancer Society was almost

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1 shamed into having another group or a group of
2 independent pathologists look at the slides or
3 forced to do it.

4 Q. My question, sir, is: Do you recall
5 Dr. Summers personally being invited to review
6 the slides?

7 MR. KLUGMAN: Objection to the form.

8 A. I think Charlie did see some of them.
9 I'm not sure of all of them. But I can't say for
10 certain.

11 Q. Did you know Dr. Fagan at Philip
12 Morris?

13 A. Yes. Yes. Ray Fagan, yes. Is that
14 him?

15 Q. Yes, sir.

16 A. Yes. I remember him.

17 Q. Ever hear of his nickname?

18 A. Not that I am aware of.

19 MR. KLUGMAN: Ray is a nickname.

20 Q. Who did you understand Dr. Fagan to be?

21 A. I can't remember. I think he was a

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1 scientist. Doctor doesn't mean he was a chemist
2 or anything. He could well have been a social
3 scientist, I really don't know.

4 Q. Were you aware that Dr. Fagan was shown
5 the photomicrographs in February of 1970 by
6 Dr. Auerbach?

7 A. No.

8 Q. To your knowledge, sir, that was not
9 something the Communications Committee of the
10 Tobacco Institute was aware of, when it prepared
11 its letter to Congress?

12 MR. KLUGMAN: Objection to the form.

13 A. It may well be, but I don't remember
14 it, or may well have been.

15 Q. We talked earlier this morning about --
16 well, strike that.

17 We talked earlier this morning about
18 Imperial, you remember that, sir?

19 A. Yes.

20 Q. Ever hear of a company called
21 Gallaher?

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1 A. Yes.

2 Q. What was Gallaher?

3 A. It is a British cigarette company or
4 was. I'm not sure it is still in existence.

5 Q. Did you know whether or not it was a
6 sister corporation to any American cigarette
7 company?

8 A. If I remember correctly, I think
9 American acquired it, American Tobacco, I'm not
10 sure. But I think so.

11 Q. Did you know who the parent was of
12 Gallaher, if anyone?

13 A. No. I don't remember, if I ever did
14 know.

15 Q. Were you aware that in April of 1970,
16 scientists from Gallaher reviewed information
17 from Dr. Auerbach concerning his research?

18 MR. KLUGMAN: Objection to the form.

19 A. No. Never heard of that.

20 Q. What was the Tobacco Working Group, do
21 you remember?

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1 A. Well, that's a familiar term, but for
2 the life of me, I cannot tell you what it was or
3 what it did.

4 Q. Who was Gio Gori, do you remember?

5 A. Yes. He was at the NCI, the National
6 Cancer Institute, one of the National Institutes
7 of Health. And was he associate director? I
8 don't know. It seemed that he, I know he was, I
9 believe he was a scientist there, at NCI, and he
10 may have been an associate director at one time.

11 Q. Let me have 14097.

12 I'll hand you what we're marking as
13 Exhibit 14097 to your deposition.

14 A. Thank you.

15 Q. Let's start at the top of the
16 document. You see that reference to
17 Mr. Vassello?

18 A. Yes.

19 Q. Do you know who Mr. Vassello was at
20 Reynolds?

21 A. No. I don't remember the name.

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1 Q. The caption is meeting of the Tobacco
2 Working Group National Institutes of Health
3 Building Number 31, Bethesda, Maryland, November
4 9-10, 1970. .

5 MR. KLUGMAN: Mr. Hoskins, is this part
6 of the Bleily group? It is not familiar to me.

7 MR. HOSKINS: No. It is not. Look at
8 the next page. I think you will see it was
9 produced before with some redactions.

10 MR. KLUGMAN: Thank you.

11 MR. HOSKINS: Vassello wasn't a lawyer,
12 if that helps..

13 MR. KLUGMAN: No. I'm not judging it.
14 It is just not familiar to me. Thank you.

15 Q. First sentence says: The members of
16 the Tobacco Working Group together with
17 affiliations are listed in attachment one. The
18 following members attended the present meeting.

19 I would like you to look at that list
20 and see if that refreshes your recollection about
21 what you understood the Tobacco Working Group to

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1 have been?

2 A. Just very, very vaguely, and I am still
3 not clear what it was, but obviously, it was, its
4 membership consisted of a scientist from the
5 industry and from government, the National
6 Institutes of Health.

7 And they may all have been, well, there
8 were some non-NIH or non-NCI people here.

9 I mean Ernest Wynder, I don't believe,
10 ever was at NIH. No. I don't think he was. Van
11 Duuren, I don't think he was. When I knew about
12 him, I believe he was at New York University.

13 Charlie Kenslow who I knew was at A.D.
14 Little in Cambridge for the longest, longest
15 time. I don't think he was there.

16 But scientists from these various
17 industries or areas, if you will.

18 Q. Now, you see the reference to
19 Dr. Murray Senkus?

20 A. I see his name here, yes.

21 Q. He was a research scientist at

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1 Reynolds, you remember that?

2 A. Yes.

3 Q. You see Dr. A. Spears, that's Alexander
4 Spears, you knew he was at Lorillard, correct?

5 A. Yes.

6 Q. You see Dr. Helmut Wakeham, you
7 understood he was at Philip Morris, correct?

8 A. Yes.

9 Q. You ever seen this document before
10 today, sir?

11 A. No.

12 Q. Was this document distributed to the
13 Communications Committee of Tobacco Institute at
14 any time, to your knowledge?

15 A. It may have been, but I do not recall
16 it.

17 MR. HOSKINS: If you could turn, sir, to
18 page four of the document on the top.

19 MR. KLUGMAN: What's the first word, is
20 that chemical?

21 THE WITNESS: The chemical

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1 subcommittee.

2 MR. HOSKINS: No it's a chart.

3 MR. KLUGMAN: There is a redaction.

4 That's the problem. Next page.

5 Q. Go down to the bottom. Strike that.

6 Did you ever come to learn that

7 Dr. Auerbach made a presentation to the Tobacco

8 Working Group of his research?

9 A. No.

10 Q. If you will go to the back page of the
11 document first. I'm sorry, it is not the back
12 page, but it is the page with the signature on it
13 which has eight at the top.

14 A. Murray Senkus', yes.

15 Q. You see that this document is signed by
16 Murray Senkus, correct?

17 A. Yes.

18 Q. Now, sir, if we could turn back to page
19 fur, it reads in capitals:

20 VERY IMPORTANT POINT: It will be
21 recalled that the slides shown at this

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1 presentation up until June, 1970, and those
2 submitted with his paper to the JAMA were of low
3 quality.

4 The slides he now has in hand are of
5 excellent quality. Based on present slides
6 Dr. Berg, cytologist at the NCI, concluded that
7 Dr. Auerbach has produced cancer in group H dogs
8 20 to 29 pounds, seven nonfilter cigarettes per
9 day.

10 Drs. Baker, Saffiotti and Bock agreed
11 with Dr. Berg. Dr. Berg also said in commenting
12 on Dr. Auerbach's presentation "if you saw the
13 same kind of cells in the human lung, you would
14 remove the lung from the human being."

15 Dr. Auerbach regretted his poor
16 judgment in exhibiting his earlier slides, which
17 he acknowledges were of poor quality. He now has
18 complete confidence in his present photographs
19 and slides and will permit any competent
20 pathologist to examine the photographs and slides
21 and his present microscopic material.

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1 Dr. Berg has already done so.
2 Dr. Auerbach announced that it would be futile to
3 satisfy 18 editorial critics of JAMA, and
4 therefore has withdrawn his paper from the JAMA
5 and a revised paper of his work is to appear in
6 the Archives of Environmental Health; Volume 21,
7 No. 26, December 1970, a specialty journal of the
8 AMA.

9 You see that reference, sir?

10 A. Yes.

11 Q. The first time you heard about that was
12 today, correct, sir?

13 MR. KLUGMAN: Objection to the form.

14 A. I believe so.

15 Q. At no time when you served on the
16 Communications Committee of the Tobacco Institute
17 were you made aware of the fact that Dr. Auerbach
18 presented slides at a Tobacco Working Group
19 meeting where Dr. Senkus, Dr. Spears and
20 Dr. Wakeham were in attendance, fair statement?

21 MR. KLUGMAN: Objection.

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1 A. I don't recall that.

2 Q. And do you recall, sir, any
3 advertisement that the Tobacco Institute paid for
4 in any paper in the United States or anywhere
5 else in the world where they stated that
6 Dr. Berg, a cytologist at the National Cancer
7 Institute, concluded that Dr. Auerbach had
8 produced cancer in some of his dogs?

9 A. No.

10 MR. KLUGMAN: Objection to the form.

11 A. No. I do not.

12 Q. And do you recall, sir, Mr. Kornegay
13 writing any followup letter to members of
14 Congress disclosing to Congress what is set forth
15 in the document before you, which is
16 Exhibit 14097?

17 MR. KLUGMAN: Objection to form.

18 A. No. I do not.

19 Q. Now, sir, I want to direct your
20 attention back to the documents we started on
21 this morning and earlier this afternoon dealing

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1 with central nervous system research.

2 Do you have any present recollection of
3 any time where lawyers representing tobacco
4 companies directed that central nervous system
5 research should be stopped?

6 A. No.

7 MR. KLUGMAN: Objection to form.

8 Q. Do you have any recollection of any
9 circumstances where lawyers directed that the CTR
10 research should be stopped?

11 A. I cannot recall any.

12 VIDEO OPERATOR: Off the record, the
13 time is 3:10.

14 (Discussion off the record.)

15 VIDEO OPERATOR: We're back on the
16 record. The time is 3:12. This is the beginning
17 of the third videotape.

18 Q. Did you ever hear of Ted Sterling?

19 A. Yes.

20 Q. Who is Ted Sterling?

21 A. Ted Sterling is a scientist who may

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1 still be at, let's see, Simon Frazier University
2 in Burnaby, British Columbia, Canada.

3 Q. Who is Chuck Wall, do you remember?

4 A. I know he is a lawyer. I'm not sure
5 whether he is at Philip Morris or a law firm.

6 I believe that's the Chuck Wall I am
7 thinking of, about whom you are asking.

8 Q. At one time, he was at Shook, Hardy &
9 Bacon. You remember that, correct, sir?

10 A. I'm not sure that I do.

11 MR. HOSKINS: Let me hand you what we've
12 marked as 20317.

13 MR. KLUGMAN: Is this a privileged
14 document, Mr. Hoskins?

15 MR. HOSKINS: It is a Bleily document.

16 MR. KLUGMAN: It is a Bleily document.
17 We'll exclude the questioning on this from any
18 record in the Ohio case.

19 Q. You see the reference there: Sterling
20 is the man Shinn and Hardy are working with on
21 this project to embarrass Hammond and raise

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1 questions in scientific community.

2 Do you see that, sir?

3 A. Yes.

4 Q. What knowledge do you have about Shinn
5 and Hardy working with Sterling in an effort to
6 embarrass Hammond?

7 MR. KLUGMAN: Objection to form.

8 A. I have no knowledge of anything like
9 that.

10 Q. Ever hear of it occurring?

11 A. I'm sorry?

12 Q. Ever hear of anything about this, sir?

13 MR. KLUGMAN: Objection to form.

14 A. This specific thing, no. I can't
15 remember having heard it.

16 Q. I would like to direct your attention
17 to Dr. Homberger. Let me have, if you would,
18 20112.

19 Sir, I'm going to hand you what's been
20 market as Exhibit 20112 to the deposition.

21 MR. KLUGMAN: That is a Bleily

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1 document, I assume?

2 MR. HOSKINS: That's right.

3 MR. KLUGMAN: So we'll exclude the
4 exhibit and any testimony on it from the Ohio
5 case.

6 Q. Do you know Stephen Parrish?

7 A. Right.

8 Q. Who is Stephen Parrish?

9 A. He used to be the Shook Hardy. I
10 believe he is now with Philip Morris.

11 Q. We talked about Charles Wall. Do you
12 know Theresa Smith?

13 A. I don't recall the name. I may have,
14 but I just don't recall name.

15 Q. Let's start at background.

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REDACTED

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7 Sir, do you recall having any knowledge
8 of the research that Dr. Homberger prepared or
9 performed for CTR or for Lorillard or for Philip
10 Morris?

11 MR. KLUGMAN: Could you break it down
12 to three questions?

13 Q. Let's talk about CTR. Are you aware
14 from 1955 through 1981, Dr. Homberger received
15 funding from CTR, correct?

16 MR. KLUGMAN: Objection to the form.

17 A. Well, I didn't recall the time period,
18 but, yes, I know he had done some work for, with
19 CTR funding.

20 Q. Were you also aware that he did work
21 with Lorillard funding?

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1 A. I don't remember that at all.

2 Q. Were you also aware that he did work
3 with Philip Morris funding?

4 A. I have to say the same thing. I did
5 not know that. If I did know it, I have
6 forgotten it.

7 Q. Were you aware that he received \$4
8 million in funding from CTR or Lorillard and
9 Philip Morris?

10 MR. KLUGMAN: Objection to form.

11 A. No. No.

12 Q. If we could turn to the second page.
13 You see the reference to problem areas for CTR?

14 A. Yes.
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Do you see that, sir?

A. Yes.

Q. Skip down a line. There is another underline.

REDACTED

Do you see that statement, sir?

A. Yes.

Q. Now, let's skip a paragraph.

REDACTED

A. Yes.

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1 Q. I want to direct your attention to this
2 press conference in Atlantic City.

3 You recall that press conference, fair
4 statement?

5 A. Yes.

6 Q. Tell the jury what role, if any, you
7 had in cancelling the press conference in
8 Atlantic City.

9 MR. KLUGMAN: Objection to the form.
10 Ago ahead.

11 A. I can tell you what role I had in
12 connection with a press conference that had been
13 scheduled for Atlantic City, as best as I can
14 recall.

15 I knew in advance that Homberger was
16 going to be at the press conference or was going
17 to be at the meeting.

18 I talked with Dr. Hockett, who said
19 that Homberger was upset that his project was not
20 being continued, would not accept any explanation
21 for CTR as being valid for discontinuation of the

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1 funding.

2 I am trying to recall when I knew that
3 Homberger had requested a press conference, but I
4 did learn perhaps a day or two before the meeting
5 started from the public information person, I
6 don't recall her exact title, but she did handle
7 the press room, that there was going to be a
8 press conference for Homberger and that he had
9 told her he was going to -- well, maybe I learned
10 that when I got to Atlantic City. I'm confused
11 about the exact timing it is so long ago.

12 But at any rate, I learned the nut, the
13 meat of the situation, that Homberger had told
14 this public relations woman from the sponsoring
15 organization, that he was going to accuse the CTR
16 of seeking to sensor his work and was trying to
17 prevent him from disclosing his findings, because
18 they were, to put it simply, against smoking.

19 And I went to Atlantic City for the
20 meeting, and I attended a number of meetings. I
21 probably would have gone, I would have gone to

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1 the meeting regardless of whether Homberger was
2 going to be there or not.

3 But this, of course, was a special
4 situation in which I was going to try to protect
5 my client. And so I had copies of letter to and
6 from him, I guess, that Dr. Hockett had give me
7 or Tom Hoyt, I don't recall which.

8 And when I got there and confirmed the
9 fact that there was going to be a press
10 conference, I told Mrs. Graves, the public
11 relations person for the sponsoring organization,
12 what had happened between CTR and Homberger, as
13 best as I could, as was told to me about his
14 funding being discontinued because he had not
15 been able to produce the results for which he had
16 been given the money, that no one had ever told
17 him he could not report on what he did, and if he
18 were going to make the charges against CTR which
19 would have been very strong and probably
20 undoubtedly would have attracted a great deal of
21 media attention, I was going to issue a statement

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1 that would say this, this, this and this.

2 And Mrs. Graves said, well, I suggested
3 to her if the press conference were held, I was
4 going to make a strong statement, issue a strong
5 statement from the Council. And I had
6 previously, earlier that afternoon or morning, I
7 just don't recall the exact time, told Mr. Hoyt
8 by phone what I had learned when I got to
9 Atlantic City.

10 And I read him a draft of the statement
11 I proposed being issued in the event it had to
12 be. After I had given all this information to
13 Mrs. Graves, she told me she would get back to
14 me. And she did, I don't remember when, but,
15 certainly, that same day.

16 The press conference was scheduled for
17 a Monday, I believe, Monday afternoon or perhaps
18 morning. Again, I can't recall exactly.

19 She did call me back later that
20 afternoon and told me she had talked with members
21 of her board of the organization, and it seemed

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1 that there were enough members there who called,
2 described Dr. Homberger as an entrepreneur, a
3 character, I guess, and that the situation could
4 get a little bit messy if there were a press
5 conference and I issued a statement on behalf of
6 the Council.

7 And I suggested to Mrs. Graves, though
8 she said something about cancelling. I probably
9 did suggest it, because I told her if the press
10 conference is held, this is what I am going to
11 do, and apparently her board did not want that to
12 happen.

13 So she informed Homberger. I don't
14 think he had left home for Atlantic City yet. I
15 don't know, but she knew where to reach him, and
16 told him that the press conference was being
17 cancelled.

18 And so it was.

19 Q. Now, sir, did you have authority to
20 issue any statement from the CTR at that time?

21 MR. KLUGMAN: Objection. Objection to

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1 form. You can go ahead and answer.

2 A. I would not have issued any statement
3 without authority from Mr. Hoyt.

4 Q. Was it your understanding Mr. Hoyt gave
5 you authority to issue a statement should
6 Homberger's press conference go forward?

7 A. Well, pending final editing or
8 adjustment, he would know the exact text of it
9 before I issued it.

10 Q. Did you have that authority in hand
11 before you spoke with Mrs. Graves, and told her,
12 you would issue a statement?

13 MR. KLUGMAN: Objection to the form.

14 A. I did not have anything written, but I
15 had told Mr. Hoyt the morning when I read him the
16 draft I had prepared then, and I said, Tom, this
17 is going to be a, if Homberger says what he has
18 proposed saying, it is going to be very damaging
19 to CTR.

20 It will be a lie that the press will
21 pick up and run with, and if we catch up with it,

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1 we probably will not get anywhere. We won't be
2 able to catch up with it. You don't catch up to
3 something like that.

4 And while Tom was always reluctant to
5 issue statements, especially on a controversial
6 situation, he agreed with me.

7 Q. Where is the draft statement you
8 prepared today; do you know?

9 A. It could be in my files. I just don't
10 recall.

11 Q. Do you recall saving that draft
12 statement?

13 A. Oh, my God, 28 years ago? When did
14 this occur? I don't even remember the time, in
15 the seventies sometime.

16 MR. KLUGMAN: It is only twenty-four
17 plus, just like last week.

18 Q. 1970?

19 A. 28 years ago, I don't recall where it
20 is.

21 Q. Do you recall destroying that

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1 document?

2 A. What do you mean by destroying it? I
3 might have thrown it out and kept just a copy of
4 the final, if I was going to issue it.

5 I may not have even had a final one,
6 because it would have depended exactly on what he
7 did say, and I would not have, I may have had a
8 draft. I just don't remember, but I certainly
9 did have something written down.

10 Q. What did you represent to Mrs. Graves
11 the statement was going to include?

12 A. I thought I already covered that.

13 MR. KLUGMAN: You don't need to repeat
14 what you already said, Mr. Zahn.

15 Q. Your quote was this, this and this.

16 A. No. I said that he was upset that CTR
17 was cutting off his funding, the reason being as
18 CTR explained to me, that he had not done what he
19 had proposed to do with his project and there was
20 no need to pour money down that hole.

21 Those are not the words given to me.

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1 that's my description of what I recall.

2 He was probably upset that a scientist
3 in Germany had already reported what he was
4 claiming he had found.

5 Q. That was Dr. Dontewill, correct?

6 A. Yes. And there had been a published
7 report available on what he said he was going to
8 report.

9 Q. Do you recall anything else about the
10 representations you made to Mrs. Graves?

11 MR. KLUGMAN: Objection to the form.

12 A. There may have been. I cannot at this
13 moment.

14 MR. HOSKINS: Let me hand you what we're
15 going to mark as Exhibit 30236.

16 MR. KLUGMAN: Is this another Bleyly
17 document?

18 MR. HOSKINS: Yes, sir.

19 MR. KLUGMAN: Same rules apply with
20 respect to Richardson on the one hand and the
21 Ohio Iron Workers on the other hand.

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1 Q. Let's turn, sir, if you would, to page
2 three of that document.

3 A. I'm sorry.

4 Q. Page three of that document.

5 MR. KLUGMAN: My copy goes one, three,
6 four.

7 THE WITNESS: Yeah, mine, too.

8 MR. HOSKINS: Okay.

9 THE WITNESS: Unless it is stuck
10 somewhere else.

11 (Discussion off the record.)

12 MR. HOSKINS: We'll start at page three
13 and see if we can't get a complete copy before we
14 go much further.

15 Q. You see at page three, sir, 1970 to
16 1974, Homberger's demise. If we could skip down
17 to the third full paragraph.

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10 You see that reference, sir?

11 A. Yes.

12 Q. Then it makes a reference to
13 ZN497-499. You see that reference?

14 A. Yes.

15 Q. You understand that that's a reference
16 to Bates numbering that was put on documents you
17 produced to CTR as part of Cippolone?

18 MR. KLUGMAN: Objection. They weren't
19 produced to CTR.

20 MR. HOSKINS: Who were they produced to?
21 Mark Edell?

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1 MR. KLUGMAN: No. They were provided to
2 us as counsel, or perhaps predecessors, who
3 produced them to Mr. Edell on behalf of Mr. Zahn.

4 Q. Sir, did you mark the documents that
5 you have produced ZN or was that done by someone
6 else, do you remember?

7 A. I don't if I have seen, I guess I have
8 seen copies of some of the documents that came
9 from me, but I did not mark anything.

10 Q. I'm going to hand all counsel the
11 famous missing page two to add to that exhibit.
12 If you could just add that page, I would
13 appreciate it.

14 While you are doing that, sir, do you
15 recall taking those notes of the January, 1973,
16 CTR annual meeting?

17 A. No. I do not.

18 Q. Having read this paragraph, does that
19 refresh your recollection about Dr. Homberger's
20 presentation where he reported informally to
21 Summers that he had found larynx cancer in

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1 hamsters exposed to smoke?

2 MR. KLUGMAN: Objection to the form.

3 A. I'm a little confused by this
4 explanation here.

5 MR. KLUGMAN: So is the author I can
6 guarantee it.

7 A. How can Homberger be report informally
8 to Summers at a scientific meeting at which
9 Homberger was giving a paper? That's what it
10 says.

11 Q. You have no recollection of that?

12 A. I find that very confusing. I just
13 don't understand that.

14 Q. Do you have any recollection of these
15 notes that are referenced here?

16 A. No.

17 Q. No present recollection, sir?

18 A. No.

19 Q. Have any recollection of any time where
20 Dr. Homberger told Summers or anyone else, that
21 his inhalation research had found larynx cancer

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1 in hamsters exposed to smoke?

2 A. All I can think of is at the meeting at
3 which his scheduled press conference was
4 unscheduled, he gave a presentation before his
5 peers.

6 And he reported on his work; and I, of
7 course, took note at the time and included those,
8 although I can't recall the exact wording, I know
9 I wrote a memo about the meeting for CTR and the
10 member companies, which is something I did at
11 virtually every meeting I went to.

12 But I don't recall the substance of
13 it. I know I did emphasize, I believe I did
14 emphasize that though the press conference was
15 cancelled, Homberger had every opportunity in the
16 world to make the claims he said he was going to
17 make at the press conference. He could have made
18 it in front of his peers, and he chose not to do
19 that.

20 Q. Just go to the next sentence, sir.
21 that's underline. It says:

REDACTED

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Do you see that, sir?

A. Where are you?

MR. KLUGMAN: Bottom of the page.

A. Are you on page two or three? On
three? Yes. I see those.

Q. I want you to direct yourself back to
the date of the CTR annual meeting. That reads
January, 1973, correct?

A. Yes.

Q. Now, if we could turn to the next
page. I'm sorry, two pages forward.

A. Page five.

Q. Right. 1974-75 presentation of the
results to the public. Do you see that, sir?

A. Yes.

Q.

REDACTED

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REDACTED

Again, there is a reference to some documents
with the ZN stamp.

Then it goes on to read:

REDACTED

Okay.

So according to this memo in April,
1974, Homberger completed his paper, and then he
proceeded to present it in Atlantic City?

A. Uh-huh.

MR. KLUGMAN: I don't believe it says
that, and that happens to be entirely false,
whether it says that or not.

Q. Okay. Directing your attention back
two pages, does this now refresh your
recollection of an earlier instance when
Dr. Homberger informally reported his results?

MR. KLUGMAN: To whom?

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1 MR. HOSKINS: To Summers, Dr. Summers.

2 A. You know, I'm further confused in
3 looking again at that paragraph on page three to
4 which you are referring. It says that I took
5 notes of the CTR annual meeting in January of
6 1973.

7 Q. Okay.

8 A. And I don't know why I would have taken
9 notes at that meeting.

10 Q. Okay.

11 A. I mean it was an annual client meeting,
12 a normal thing I believe at which they, the board
13 of directors did what they had to do legally as a
14 nonprofit group and took care of, you know,
15 ordinary business.

16 I just don't know how it could, why I
17 would take any notes there, really. I may have.
18 I just don't remember at all.

19 Q. Perhaps if you didn't think of the
20 title of the meeting, do you recall any
21 circumstance where you took notes of an informal

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1 report of Dr. Homberger, where he reported that
2 he had established cancer of the larynx?

3 A. Well, I would have had to have been at
4 a meeting with Charlie Summers and Freddy
5 Homberger and perhaps other people. It would
6 have to be other people.

7 I don't remember being at any kind of
8 meeting, whether it was over a drink or a dinner
9 or a CTR, no, never at CTR, I believe, and
10 Charlie was not in Atlantic City or any other
11 place where Homberger was and where I was. I
12 just don't remember that at all.

13 Q. And, sir, if you could turn, please, to
14 page five of the document. Okay. You see
15 1974-75?

16 A. Yes.

17 Q. Presentation, we were just there, let's
18 skip down, it says: Zahn's notes of, I'm sorry,
19 come up. It says underscore:

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REDACTED

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REDACTED

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And then there is a reference to a ZN document. Do you see that, sir?

A. Yes.

Q. Sir, I'm going to hand you Exhibit 11508 and ask you to take a look at that, please.

A. See, I left out a word.

Q. That's the document you prepared to Henry Ramm and Mr. Hoyt, correct?

A. Oh, it must be, it is my letterhead or my logo, absolutely.

Q. And if you go down to that first page, you see that LZN number there?

A. Yes.

Q. What's that number read?

A. 19604.

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1 Q. What's the next page, what's the LZN?
 2 A. 19605.
 3 MR. KLUGMAN: It isn't an LZN.
 4 MR. HOSKINS: How do you read that?
 5 MR. KLUGMAN: It is a ZN.
 6 A. ZN. Some sort of symbol or whatever.
 7 Q. If you can go back to 20326.
 8 A. Is that this long document?
 9 Q. Yes, sir.
 10 A. Yeah.
 11 Q. Where it says reference ZN 19604.
 12 A. What page is that on, sir?
 13 Q. The page we were just on, sir.
 14 A. Three of it or five?
 15 Q. Five.
 16 A. Okay.
 17 Q. See the reference there to ZN 19604?
 18 A. 4 and 5, which is my memo.
 19 Q. Right.
 20 A. Of April 22, 1974.
 21 Q. Now, sir, you recognize this April 22.

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1 1974 memo that we have marked as 11508, correct?

2 A. Yes.

3 Q. Do you recall preparing that document,
4 correct?

5 A. Well, I don't remember preparing it,
6 but I obviously did. I do not deny it.

7 Q. You recall sending a copy of this to
8 Mr. Ramm and to Mr. Hoyt, correct?

9 A. Yes.

10 Q. And you recall at the bottom of the
11 memo, including the p.s., I doubt if you or Tom
12 will want to retain this note, correct?

13 A. Yes. I do remember it, I see it here.

14 Q. And this is an accurate and complete
15 copy of the document that you sent to Henry and
16 Tom, correct?

17 A. I assume so.

18 MR. KLUGMAN: Well, it has a bunch of
19 stamps and things on it.

20 Q. This is a document that sets forth what
21 you did in connection with Homberger at the

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1 recent Federation meeting in Atlantic City?

2 MR. KLUGMAN: Objection the form.

3 A. Yes.

4 Q. It talks about Tom, which is Tom Hoyt,
5 was kept informed of various developments, as
6 they arose, correct?

7 A. Yes.

8 Q. And this memo sets forth what you
9 previously testified to, with respect to your
10 interaction with Mrs. Graves in an effort to
11 cancel this press conference, correct?

12 MR. KLUGMAN: Objection to form.

13 A. Yes.

14 Q. And she was a long time friend,
15 correct?

16 A. Yes.

17 Q. Now, according to this memo, you told
18 Mrs. Graves that you had with you documents to
19 refute Homberger's contention of censorship or
20 suppression of information. And then on the
21 contrary, he had been asked to publish. You see

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1 that reference?

2 MR. KLUGMAN: Midway down.

3 A. Yes.

4 Q. What documents did you have with you?

5 A. Well, as I had mentioned a few moments
6 ago, a few minutes ago, I had material that Bob
7 Hockett, Dr. Hockett, had given me and that I
8 took with me.

9 Q. And what particular, why was it that
10 you came to this conference with material about
11 Dr. Homberger in your possession?

12 A. Well, the timetable I had given a short
13 while ago was obviously off by several weeks,
14 because I open this, well, let's see, second
15 paragraph:

16 I had expressed fear several weeks ago
17 as to what Homberger might try to do with his
18 scheduled paper.

19 I don't recall what I heard or who told
20 me, it had to be somebody at CTR.

21 MR. KLUGMAN: Mr. Zahn, why don't you

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1 continue reading the paragraph. Read it to
2 yourself.

3 A. I purposely had -- oh, all right.
4 Well, the second paragraph pretty clearly
5 explains what the situation was.

6 Q. Okay. What were the materials, the
7 specific documents that you had with you, if
8 any?

9 A. I cannot recall, but they were either
10 letters or memoranda or something obviously
11 written that I had gotten from Dr. Hockett. What
12 they were, specifically, I just don't remember.

13 Q. Now, at any time during the Atlantic
14 City conference, did you tell Mrs. Graves that
15 Dr. Homberger had reported in January, 1973, that
16 he had found larynx cancer in hamsters exposed to
17 smoke?

18 A. I don't remember.

19 MR. KLUGMAN: Do you want him to look
20 at the memo? I mean it covers that stuff. Are
21 you just looking for his recollection?

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1 MR. HOSKINS: I asked for recollection.

2 MR. KLUGMAN: It is a little confusing
3 here, because we are shifting back and forth
4 between the two and I think the record should be
5 clear.

6 Q. I understand. This memo, to your
7 knowledge, accurately reflects what occurred at
8 the Atlantic City conference, correct?

9 MR. KLUGMAN: Objection to form.

10 A. I would have to say so. I tried to be
11 accurate.

12 Q. Now, in addition to this memo you made
13 an oral presentation to something called the
14 Tobacco Forum, where you discussed this matter,
15 correct?

16 A. Gee I don't remember that.

17 Q. If you could go back to 20326.

18 A. 20326. What is that? Yes.

19 Q. It is the previous document. If you
20 could go to page six.

21 A. Page six.

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1 Q. Bottom paragraph.
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17 Sir, does that refresh your
18 recollection of making a presentation to the 1981
19 Tobacco Colloquium on this issue?

20 A. Well, the phrase Tobacco Colloquium
21 didn't mean anything to me and still does not.

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1 But I have to assume that it was an annual or
2 semiannual affair put on by the Tobacco Institute
3 in Washington, to which I was invited to come
4 down and talk about CTR. It has to be that.

5 At one point it was called the College
6 of Tobacco Knowledge.

7 Q. You ever hear of the Stonewall Jackson
8 Award?

9 A. No.

10 Q. Ever hear of the West By God Virginia
11 Award?

12 A. No. All right.

13 Q. We're done with that document.

14 A. Which one, the long one?

15 Q. Right. And the short one. I think we
16 touched on this earlier, you recall being deposed
17 in the Cippolone case, correct?

18 A. Well, I remember I was deposed, yes.

19 Q. Now, at the time of that deposition,
20 you had a current consulting arrangement with
21 CTR, correct?

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1 A. Yes.

2 Q. And we talked also about being deposed
3 by Susan Nyal in the Massachusetts case on May 28
4 of, I guess this year, do you remember that, sir?

5 A. Yes.

6 Q. And then there is this deposition. And
7 to your knowledge, sir, there have been no other
8 depositions, correct? Let me strike that.

9 I know of one other deposition, you
10 were deposed by Ron Motley in a Port Authority
11 case, correct?

12 A. Yes.

13 Q. Was that a tobacco case?

14 A. No. I seem to have clients that have
15 these kind of health problems. It was a client
16 in an asbestos industry sort of business.

17 Q. And other than those three depositions
18 and this deposition, do you remember any other
19 depositions that you gave?

20 A. I don't, Mr. Hoskins, which doesn't
21 mean there wasn't one, but I don't remember any

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1 other. I don't consider the thing with the U.S.
2 Attorney to be a deposition. It was not.

3 Q. Did you ever testify at a trial?

4 A. No.

5 Q. Do you know what an affidavit is or a
6 sworn declaration?

7 A. I believe so generally.

8 Q. Have you ever given a formal affidavit
9 or sworn declaration?

10 A. I may have at some point, in something
11 that had nothing to do with CTR or any client,
12 but I just don't recall ever having done so.

13 Well, maybe I did when I was mayor of
14 my village, yes, I'm sure I did.

15 Q. But it had nothing to do with smoking
16 and health?

17 A. No.

18 Q. What village were the mayor of?

19 A. The Village of Thomason.

20 Q. In Long Island, New York?

21 A. Right here.

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1 Q. This is the Village of Thomason?

2 A. No. There are nine villages in Great
3 Neck. This is the Village in Great Neck Plaza.
4 This is the rich village, because it has most of
5 the commercial area here. My village is almost
6 entirely residential, almost.

7 Q. When were you the mayor?

8 A. I started as a trustee, deputy mayor,
9 mayor, in the early 1980's.

10 Q. Did you ever give a written statement
11 to CTR or any of its lawyers?

12 A. I can't recall ever having done so.

13 Q. Had you ever given a recorded
14 statement, a tape recorded statement, or a
15 stenographer, a statement taken down by a
16 reporter.

17 A. No. I don't remember ever doing that.

18 Q. In the Massachusetts deposition, were
19 you subpoenaed or did you appear pseudo
20 voluntarily?

21 MR. KLUGMAN: Objection the form.

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1 A. If I remember correctly, after talking
2 with my lawyer, we agreed that they wouldn't have
3 to serve me or go through that, even though I
4 would have gotten a check out of it, I think, I
5 said, yeah, I'll come, I'll be there. The date
6 is okay.

7 Q. Now, did you prepare in any way for
8 that deposition?

9 A. Yes. I did meet with my attorney
10 before the deposition, yeah.

11 Q. The name of the attorney you met with
12 before that deposition was?

13 A. Pete Putzel.

14 Q. Did Mr. Putzel represent you with
15 respect to the U.S. Attorney issues?

16 A. Yes.

17 Q. On how many occasions and for how long
18 did you meet with Mr. Putzel?

19 A. I know he came to my house one day, had
20 lunch, and we spent the afternoon talking. There
21 may have been another time in his office for

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1 several hours, but I'm not sure about that.

2 Q. Was anyone else present at those
3 meetings, between you and Mr. Putzel?

4 A. My wife was because she also had been
5 subpoenaed, if I've got the cases right.

6 Q. Well, she would have been, her
7 deposition had been requested, correct?

8 A. I know she was subpoenaed by the U.S.
9 Attorney and I don't know whether she was --
10 I thought she was subpoenaed by Ms. Nyal. Yes.
11 She was.

12 Q. Was your wife also represented by
13 Mr. Putzel?

14 A. In the cases in which he was involved,
15 yes.

16 Q. Was she also interviewed by the U.S.
17 Attorney's Office?

18 A. No.

19 MR. KLUGMAN: Mr. Hoskins, I can
20 confirm the request, informal requests from the
21 lawyers for the Commonwealth of Massachusetts.

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1 was that they take depositions of both Mr. Zahn
2 and reserve their right to take the deposition of
3 Mrs. Zahn after that, if they chose to do it.

4 Q. And, in fact, your wife has never been
5 deposed, correct?

6 A. That's right.

7 Q. Yes or no, were documents shown to you
8 in preparation for your Massachusetts
9 deposition?

10 MR. KLUGMAN: I object. Don't answer
11 that question.

12 Q. Did you have any meetings with lawyers
13 representing CTR prior to your Massachusetts
14 deposition?

15 MR. KLUGMAN: You can answer that.

16 A. No.

17 Q. Were you shown any documents that came
18 from lawyers for CTR prior to your deposition in
19 Massachusetts?

20 A. I don't think so. I don't remember
21 any. I would have to say no.

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1 Q. Let's come forward to this deposition.
2 Did you do anything to prepare for this
3 deposition?

4 A. Yes.

5 Q. What did you do to prepare for this
6 deposition?

7 A. I met with my counsel.

8 Q. The name of that counsel was?

9 A. Debevoise & Plimpton.

10 Q. Specifically, who do you recall meeting
11 with?

12 A. Mr. Klugman and Mr. Scheiner.

13 Q. On how many occasions did you meet with
14 these individuals?

15 A. I think twice, but I'm not sure.

16 Q. How long did you meet with these
17 individuals?

18 A. Two afternoons, I believe.

19 Q. Do you remember the afternoons when you
20 met with them?

21 A. One was -- it was yesterday, wasn't

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1 it? Wasn't it?

2 MR. SCHEINER: We can't tell you what to
3 say.

4 A. I got back from California Sunday
5 night, and I had been away the week before in
6 some other place, so I guess jet lag has passed
7 me by. I wish it would catch up.

8 MR. SCHEINER: It is just that we are so
9 forgettable.

10 Q. So one was yesterday. When was the
11 previous one?

12 A. I'm trying to remember. For this one,
13 I met once with Alan, and then once with the two
14 of them. Yeah. That's the way it was.

15 Q. How many hours total in between the two
16 meetings, do you remember?

17 A. Six maybe.

18 Q. When was it --

19 A. Seven.

20 Q. When was it that you retained Debevoise
21 & Plimpton to represent you?

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1 MR. KLUGMAN: We represented him
2 before. Do you mean recently?

3 Q. Yes, sir. When did you understand that
4 these gentlemen became your lawyers instead of
5 Mr. Putzel for this deposition?

6 A. A couple of weeks ago, a short time
7 after I got the subpoena.

8 Q. Is there a reason Mr. Putzel is no
9 longer representing you?

10 A. Yeah.

11 Q. What is that reason?

12 MR. KLUGMAN: Mr. Zahn, I'm not sure
13 you have to answer that question. If you want to
14 and you are comfortable with it, go ahead.

15 A. I was uncomfortable with him.

16 Q. Did you discharge him from his
17 representation?

18 A. I did not tell him so, but I decided if
19 I needed counsel again, I would try to get
20 another lawyer.

21 Q. Were you given the option to pick your

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1 own lawyer for this deposition?

2 A. Yeah. I was in a way. I was told, you
3 can get any lawyer you want.

4 Q. And you decided not to pick your own
5 lawyer; is that a fair statement?

6 A. Well, I had dealt with Debevoise &
7 Plimpton in the Cippolone thing, and I was very
8 pleased with them, and I decided to stay with
9 them. And I'm still pleased with them. Don't
10 let it go to your head.

11 MR. KLUGMAN: It is not, don't worry,
12 although it doesn't take much these days.

13 Q. Fair to say you are not paying the
14 legal expenses of these attorneys?

15 A. No. I'm not.

16 MR. KLUGMAN: Wait until he is
17 finished.

18 Q. You understand the Council for Tobacco
19 Research is paying their expenses?

20 A. Yes.

21 Q. You understand the Council for Tobacco

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1 Research is no longer in existence.

2 MR. KLUGMAN: Objection to the form.
3 Misstates the record.

4 Q. Is it still in existence, to your
5 knowledge?

6 A. I don't know for a fact. Nobody has
7 shown me a document or anything, but they are
8 still doing some kind of business.

9 Q. Do you keep in contact with anyone who
10 currently works for the Council of Tobacco
11 Research?

12 A. No. I do not.

13 Q. Do they maintain an office for you in
14 their building?

15 A. I have not been at CTR since I left,
16 perhaps, once I went to pick up some stuff I left
17 behind or whatever, but, no, I have not been.

18 Q. Do you maintain any social
19 relationships with any of your former colleagues
20 at CTR?

21 A. No.

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1 Q. Do you maintain any social
2 relationships with any former or present members
3 of the Committee of Counsel?

4 A. No.

5 Q. In your preparation sessions for this
6 deposition, were you shown documents?

7 MR. KLUGMAN: Answer that yes or no.

8 A. Yeah, I think so, but maybe I asked for
9 some things that came up and I wanted to refresh
10 my memory, not many, I don't believe I saw a lot
11 of documents, very, very few, actually, as best I
12 can recall.

13 Q. Can you estimate the total number of
14 pages you reviewed?

15 A. Five, six. I could be wrong. Maybe it
16 was 25 or 26, but I did not do a lot of reading.

17 Q. Did you review the transcript from your
18 prior deposition in Massachusetts?

19 A. Yes. I did look at that a few weeks
20 ago, I believe. Yeah. I think so.

21 Q. What other documents do you recall

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1 reviewing?

2 A. I can't remember.

3 Q. Did you review the document, the April
4 22, 1974, confidential memorandum, that is one
5 you reviewed, this one, sir, exhibit --

6 A. No. I don't believe I did.

7 Q. 11508?

8 A. No. I don't think I did.

9 Q. Do you recall any of the documents you
10 reviewed?

11 A. No. I did not.

12 Q. Do you recall the subject matter of any
13 of the documents you reviewed?

14 A. The specific matter? No.

15 Q. Do you recall what the documents dealt
16 with?

17 A. Specifically, no.

18 Q. In general, do you recall what the
19 documents dealt with?

20 A. Well, they dealt with this whole
21 situation. Of that, I'm sure.

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1 Q. Do you have Internet access at your
2 home?

3 A. No. I do not.

4 Q. Do you use the Internet on any
5 occasion?

6 A. Mr. Hoskins, I use a word processor
7 that's about 20 years old, it has 48K in two
8 drives, one of which is broken and it literally
9 has a keyboard held together with scotch tape and
10 all I do is word process with it.

11 Q. Does your wife use the Internet?

12 A. No.

13 MR. KLUGMAN: At the time of most of
14 these events, that word processor was just a
15 glimmer in somebody's eye.

16 Q. Before today, have you seen any of the
17 documents I put before you?

18 MR. KLUGMAN: Objection to the form.

19 Q. Strike that. I want to talk about the
20 documents that counsel have been making all these
21 statements to, the Bleily documents, the formerly

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1 privileged documents.

2 Directing your attention to those
3 documents, do you recall seeing any of those
4 documents?

5 A. The only document I recall seeing is
6 mine here.

7 Q. Which is Exhibit 1150.

8 A. Yeah. I don't remember ever seeing any
9 of the others or ever hearing about the subject
10 of them.

11 Q. Sir, are you a smoker?

12 A. No.

13 Q. Ever smoke?

14 A. Yes.

15 Q. When did you smoke?

16 A. I smoked until 1985, and I probably
17 started 40 years before that.

18 Q. And is your wife a smoker?

19 A. No.

20 Q. Ever a smoker?

21 A. Yes.

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1 Q. When did she stop?

2 A. The same day I did, my birthday in
3 1985.

4 Q. When did she start?

5 A. Oh, much after I did.

6 Q. When were you married?

7 A. 1948.

8 Q. How many kids?

9 A. Two.

10 Q. What are the professions of your
11 children?

12 A. My older daughter is a recent professor
13 at the University of Washington in Seattle.

14 My younger daughter is a doctor. She
15 has a Ph.D. from the University of Southern
16 California. She is a psychologist in Malibu,
17 California.

18 Q. Sir, today we have, well, let me back
19 up a second.

20 Did you meet with your attorneys this
21 morning?

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1 A. No. We did not have a meeting,
2 really. We saw each other just before we came up
3 here.

4 Q. During today's deposition, we have
5 taken several breaks and we have had a lunch
6 break.

7 At any time during any of those breaks
8 or the luncheon recess, did you discuss your
9 testimony with anyone?

10 A. No.

11 Q. Did you have any discussions with your
12 attorneys concerning your testimony?

13 MR. KLUGMAN: You can answer that
14 question yes or no.

15 A. I can't recall.

16 MR. KLUGMAN: I'm sorry.

17 MR. HOSKINS: You were doing so well.

18 MR. KLUGMAN: I was assuming you knew
19 it yes or no.

20 A. I remember making a comment, and don't
21 let it go to your head, I thought you were a

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1 pretty sharp guy, and you were well up on
2 everything that I had ever said. But do you know
3 my blood type?

4 Q. No, sir.

5 A. Go back to the Cippolone deposition.

6 MR. HOSKINS: Tell you what I'm going to
7 do. I will take a short break. I think I'm
8 done, and I'll pass the witness. Why don't we
9 stretch our legs and welcome back.

10 VIDEO OPERATOR: Off the record, the
11 time is 4:04.

12 (Break.)

13 VIDEO OPERATOR: Go back on the
14 record. The time is 4:18.

15 MR. HOSKINS: Sir, that concludes my
16 examination at this point. I am going to pass
17 the witness. Thank you. Thank you for your
18 time.

19 THE WITNESS: You are welcome.

20 MR. KRISTAL: This is Jerry Kristal. It
21 was my understanding the deposition had been

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1 noticed for two back to back days today and
2 tomorrow.

3 We understand now that Mr. Zahn is not
4 available tomorrow; is that correct?

5 THE WITNESS: Yes.

6 MR. KRISTAL: In which case we will
7 continue this at a mutually agreeable time,
8 although I wish we had been able to conclude it
9 either later tonight or tomorrow.

10 MR. KLUGMAN: Let me just say, as I
11 have told you, we're not willing, I think it
12 would be unproductive and unprofessional to keep
13 Mr. Zahn here late into the evening.

14 I would invite you, if you have
15 questions, to ask them now. If you don't want to
16 do it that way, I guess you won't do it that
17 WAY.

18 We're going to go off the record.
19 While we're on the record, I hope we can get this
20 concluded quickly in deference to Mr. Zahn who
21 would like to get it behind him and let's do what

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1 we can to make it feel like one deposition that
2 lasted too long, rather than two depositions.

3 Anyone else? Let's go off the record
4 then, thanks.

5 VIDEO OPERATOR: That concludes today's
6 deposition. The time is 4:19.

7 (Examination suspended -- 4:19 p.m.)
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1 STATE OF MARYLAND SS:

2 I, E. D. SMITH, RPR-CRR, a Notary Public
3 of the State of Maryland, do hereby certify that
4 the within named, LEONARD ZAHN, personally
5 appeared before me at the time and place herein
6 set out, and after having been duly sworn by me,
7 was interrogated by counsel.

8 I further certify that the examination was
9 recorded stenographically by me and this
10 transcript is a true record of the proceedings.

11 I further certify that the stipulations
12 contained herein were entered into by counsel in
13 my presence.

14 I further certify that I am not of counsel
15 to any of the parties, nor an employee of
16 counsel, nor related to any of the parties, nor in
17 any way interested in the outcome of this action.

18 As witness my hand and notarial seal this
19 4 day of December, 1998.

20 My commission expires _____

21 November 1, 2001

Notary Public

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1 CERTIFICATE OF DEPONENT
2

3 I hereby certify that I have read and
4 examined the foregoing transcript, and the same
5 is a true and accurate record of the testimony
6 given by me.
7

8 Any additions or corrections that I feel are
9 necessary, I will attach on a separate sheet of
10 paper to the original transcript.
11
12

13 -----
14 LEONARD ZAHN
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